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## THE TRADE MARKS ACT, 2000.

### Act No. XIX of 2000.

*[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000 and published in the Government Gazette dated 21st Magh 2000/3rd February 1944.]*

### An Act to provide for the Registration and more effective protection of Trade Marks.

#### CHAPTER I.

#### PRELIMINARY.

WHEREAS it is expedient to provide for the registration and more effective protection of trade marks ; It is hereby enacted as follows :—

Preamble.

1. (1) This Act may be called the Trade Marks Act,

Short title, extent and commencement 2000.

(2) It extends to the whole of Jammu and Kashmir State.

(3) This section and section 85 shall come into force at once ; the remaining provisions of the Act shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.



2. (I) In this Act, unless there is anything repugnant in the subject or context,—

**Definitions.**

(a) “associated trade marks” means trade marks deemed to be, or required to be registered as, associated trade marks under this Act ;

(b) “certification trade mark” means a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified and registrable as such under the provisions of Chapter VIII in respect of those goods in the name, as proprietor of the certification trade mark, of that person ;

(c) “District Court” has the meaning assigned to it in the Code of Civil Procedure, 1977 ;

(d) “High Court” means the High Court, as defined in section 48 of the Jammu and Kashmir Constitution Act, 1996 ;

(e) “limitations” (with its grammatical variations) means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded in within the State, or as to use in relation to goods to be exported to any market outside the State ;

(f) “mark” includes a device, brand, heading, label, ticket, name, signature, work, letter or numeral or any combination thereof ;

(g) “permitted use” means the use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject ;

(h) “prescribed” means prescribed by rules made, in relation to proceedings before the High Court, by the High Court, and in other cases, by the Government ;

(i) “registered” (with its grammatical variations) means registered under this Act ;

(j) “registered trade mark” means a trade mark which is actually on the register ;

(k) “registered user” means a person who is for the time being registered as such under section 41 ;

(l) “trade mark” means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to



indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person ;

(m) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfers, not being assignment ;

(n) "tribunal" means the Registrar or, as the case may be, the Court before which the proceeding concerned is pending.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references herein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in any other relation, whatsoever, to such goods.

3. The provisions of this Act shall be in addition to Application of other laws not barred. and not in derogation of, the provisions of any other law for the time being in force.

## CHAPTER II.

### THE REGISTRAR AND CONDITIONS FOR REGISTRATION.

4. For the purposes of this Act there shall be established The Register of trade marks. at the Patent Office a Trade Mark Registry, and a record called the Register of Trade Marks (in this Act referred to as the register) shall be kept thereat wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed, but there shall not be entered in the register any notice of any trust express, implied or constructive nor shall any such notice be receivable by the Registrar.

(2) Subject to the superintendence and direction of the Government, the register shall be kept under the control and management of the Controller of Patents and Designs, who shall for the purposes of this Act be called the Registrar of Trade Marks (and is in this Act referred to as the Registrar).

(3) The register shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.



**5.** (1) A trade mark may be registered only in respect of particular goods or classes of goods.  
Registration to be in respect of particular goods.

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision in the matter shall be final.

**6.** (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely:—  
Distinctiveness requisite for registration.

(a) the name of a company, individual, or firm, represented in a special or particular manner ;

(b) the signature of the applicant for registration or some predecessor in his business ;

(c) one or more invented words ;

(d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India ;

(e) any other distinctive mark, provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.

(2) For the purposes of this section, the expression "distinctive" means adapted, in relation to the goods in respect of which a trade mark is proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from, goods in the case of which no such connection subsists, either generally or where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

(a) the trade mark is inherently so adapted to distinguish, and

(b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted to distinguish :

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to which registration is applied for, during a period from a date



prior to the 1st Baisakh 1996, to the date of application for registration, the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.

**7.** (1) A trade mark may be limited wholly or in part to one or more specified colours, and any such limitation shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

(2) So far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

**8.** No trade mark nor part of a trade mark shall be registered which consists of, or contains, any scandalous design, or any matter the use of which would—

(a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a court of justice ;

(b) be likely to hurt the religious susceptibilities of any class of His Highness' subjects ; or

(c) be contrary to any law for the time being in force or to morality.

**9.** No word which is commonly used and accepted name of any single chemical element or single chemical compound (as distinguished from a mixture) shall be registered as a trade mark in respect of a chemical substance or preparation, any such registration shall, notwithstanding anything in section 24, be deemed for the purposes of section 46 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require :

Provided that this section shall not apply to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

**10.** (1) Save as provided in sub-section (2), no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or which so



nearly resembles such trade mark as to be likely to deceive or cause confusion.

(2) In case of honest concurrent use or of other special circumstances which, in the opinion of Registrar, make it proper so to do he may permit the registration by more than one proprietor of trade marks which are identical or nearly resemble each other in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by a competent Court.

**11.** (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.

Registration of parts of trade marks and of trade marks as a series.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and have all the incidents of an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statements of the goods in relation to which they are respectively used or proposed to be used ; or

(b) statements of number, price, quality or names of places ; or

(c) other matters of a non-distinctive character which does not substantially affect the identity of the trade mark ; or

(d) colour ;

seeks to register those trade marks, they may be registered as a series in one registration.

**12.** (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

Associated trade marks.

(2) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 11, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be and shall be registered as, associated trade marks.



(3) All trade marks registered in accordance with the provisions of sub-section (3) of section II as a series in one registration shall be deemed to be and shall be registered as associated trade marks.

(4) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

Registration subject to disclaimer.

**13.** If a trade mark contains—

(a) any part not separately registered as a trade mark in the name of the proprietor, or of the separate registration of which no application has been made, or

(b) any matter common to the trade, or otherwise of a non-distinctive character,

the tribunal, in deciding whether the trade mark shall be entered or shall remain on the register, may require as condition of its being on the register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled or make such other disclaimer as the tribunal may consider necessary for the purpose of defining the rights of the proprietor under the registration :

Provided that no disclaimer shall affect any right of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

### CHAPTER III.

#### PROCEDURE FOR, AND DURATION OF, REGISTRATION.

**14.** (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it shall apply in writing to the Registrar in the prescribed manner, and subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

Application for registration.



(2) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat.

(3) The tribunal may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as it may think fit.

**15.** (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised, in the prescribed manner:

Provided that the Registrar may cause an application to be advertised before acceptance if it relates to a trade mark to which clause (e) of sub-section (1) of section 6 applies, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(3) The Registrar shall serve in the prescribed manner a copy of the notice on the applicant, and within the prescribed time the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement the Registrar shall serve in the prescribed manner a copy thereof on the person giving notice of opposition and shall, after hearing the parties, if so required, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice, or an appellant against any order of the Registrar under section 14 or this section, neither resides nor carries on business in the State, the tribunal may require him to give security for costs of the proceedings before it, and in



default of such security being duly given may treat the opposition or application or appeal, as the case may be, as abandoned.

**16.** 1) When an application for registration of a trade mark has been accepted and either has not been opposed and the time for notice of opposition has expired, or having been opposed, has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error, or unless the Government otherwise directs, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the making of the said application, and that date shall, subject to any direction made under section 83 applicable to such trade mark, be deemed for the purposes of this Act to be the date of registration.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

**17.** (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

(a) on behalf of both or all of them, or

(b) in relation to an article with which both or all of them are connected in the course of trade, those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

**18.** (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section.



(2) The Registrar, shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fifteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as "the expiration of the last registration").

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

**19.** Where a trade mark has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year next after the date of removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

(a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

## CHAPTER IV.

### EFFECT OF REGISTRATION.

**20.** (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for the infringement of an unregistered trade mark unless such trade mark has been continuously in use since before the 1st Baisakh 1996, by such person or by a predecessor in title of his and unless an application for its registration made within five years from the commencement of this Act, has been refused; and the Registrar shall, on application in the prescribed manner, grant a certificate that such application has been refused.

No action for infringement of unregistered trade marks.



(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

**21.** Subject to the provisions of sections 22, 25 and 26  
Right conferred by registration. the registration of a person in the register as proprietor of a trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods and without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being used as a trade mark; or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

**22.** (1) The right to the use of a trade mark given under  
No infringement in certain circumstances. section 21 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the



use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(3) The use of a registered trade mark, being one of two or more registered trade marks which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

**23.** In all legal proceedings relating to a registered trade mark, the fact that a person is registered as proprietor thereof shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

**24.** In all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 8.

**25.** Nothing in this Act shall entitle the proprietor of a registered user of a registered trade mark to interfere with or restrain the use by person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his, or

(b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his, whichever is the earlier or to object (on such use being proved) to registration of that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section 10.

**26.** No registration of a trade mark shall interfere with any *bona fide* use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, not being a description that would be



likely to be taken as importing any such reference as is mentioned in clause (b) of section 21 or in clause (b) of section 57.

**27.** (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any words which the trade mark contains or of which it consists as the name or description of an article or substance :

Words used as name or description of an article or substance.

Provided that, if it is proved either—

(a) that there is a well-known and established use of the said words as the name or description of the article or substance by a person carrying on a trade therein, not being used in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor ; or

(b) that the article or substance has been manufactured under a patent in force at or granted after the commencement of this section, that a period of two years or more after the cessor of the patent has elapsed, and that the said words are the only practicable name or description of the article or substance :—

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then

(a) for the purposes of any proceedings under section 46—

(i) if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed to be an entry wrongly remaining on the register ;

(ii) if the trade mark contains such words and other matter, the tribunal, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in the relation to that article or substance and any goods of the same description, of such words, provided that no disclaimer shall affect any rights of the proprietor of a trade mark



except such as arise out of the registration of the trade mark in respect of which the disclaimer is made ;

(b) for the purpose of any other legal proceedings relating to the trade mark—

(i) if the trade mark consists solely of such words all rights of the proprietor under this Act or any other law to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or

(ii) if the trade mark contains such words, in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in clause (a) of the proviso to sub-section (i) first became well known and established, or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

## CHAPTER V.

### ASSIGNMENT AND TRANSMISSION.

**28.** The person for the time being entered in the register as proprietor of a trade mark, shall subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

**29.** Notwithstanding anything in any other law to the contrary, a registered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not, and in respect either of all of the goods in respect of which it is registered or of some only of those goods.

**30.** An unregistered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not :

Provided that except in connection with the goodwill of a business assignment or transmission shall be permissible only, if—

(a) at the time of assignment or transmission of the



unregistered trade mark it is used in the same business as a registered trade mark, and

(b) the registered trade mark is assigned or transmitted at the same time and to the same person as the unregistered trade mark, and

(c) the unregistered trade mark relates to goods in respect of which the registered trade mark is assigned or transmitted.

**31.** (1) Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion :

Restrictions on assignment or transmission where multiple exclusive rights would be created.

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise trade in, within the State (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside the State.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or mis-representation be conclusive as to the validity or invalidity under sub section (1) of the assignment in so far as such, validity or invalidity depends, upon the facts set out in the case, but as regards, a certificate in favour of validity, only if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.



**32.** Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in any place in the State and an exclusive right in another of these persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in any other place in the State:

Restrictions on assignments or transmissions where exclusive rights would be created in different parts of the State.

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claim that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 31 if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

**33.** Where an assignment in respect of any goods of a trade mark which is at the time of the assignment used in a business in those goods, is made after the commencement of this Act otherwise than in connection with the goodwill of that business, the assignment shall not take effect unless the assignee, not later than the expiration of six months, from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

Conditions for assignment otherwise than in connection with the goodwill of a business.



**34.** (1) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Government, for which application shall be made in writing in the prescribed manner through the Registrar.

Conditions for assignment and transmission of certification trade marks and associated trade marks.

(2) Associated trade marks shall be assignable and transmissible only as a whole and not separately.

**35.** (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

Registration of assignments and transmission.

(2) Except for the purposes of an appeal against a decision of the Registrar under sub-section (1) or of an application under section 46, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1) shall not be admitted in evidence before any tribunal in proof of the title to a trade mark unless the tribunal otherwise directs.

## CHAPTER VI.

### USE OF TRADE MARKS AND REGISTERED USERS.

**36.** (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark, if the Registrar is satisfied that a company is about to be formed and registered under the Jammu and Kashmir Companies Act, 1997, and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods by the company.

Proposed use of trade mark by company to be formed.

(2) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods is registered in the name



of an applicant who relies on intention to assign to a company, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

**37.** (1) Subject to the provisions of section 38, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application in the prescribed manner by any person aggrieved to the High Court or to the Registrar, on the ground either—

Removal from register and imposition of limitations on ground of non-use.

(a) that the trade mark was registered without any *bona-fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 36 apply, by the company concerned, and that there has in fact been no *bona-fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application ; or

(b) that upto a date one month before the date of the application, a continuous period of five years or longer elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being :

Provided that, except where the applicant has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application made under clause (a) or clause (b) in relation to any goods, if it is shown that there has been before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold or otherwise traded



in, in particular place in the State (otherwise than for export from the State) or in relation to goods to be exported to a particular market outside the State, and

(b) a person has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be so sold, or otherwise traded in ; or in relation to goods to be so exported the tribunal is of opinion that he might properly be permitted so to register such a trade mark, on application by that person in the prescribed manner to the High Court or to the Registrar, that tribunal may impose on the registration of the first mentioned trade mark such limitations as it thinks proper for securing that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and no to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates.

**38.** (1) Where a trade mark consisting of any invented word has become so well-known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first mentioned goods then, notwithstanding that the proprietor registered in respect of the first mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 37 the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under the said section.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.



(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar the registration of a trade mark as a defensive trademark may be cancelled on the ground that the requirements of sub-section (1) are no longer satisfied in respect of any goods in relation to which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in relation to which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(b) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

**39.** (1) A person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark and either with or without conditions or restrictions).

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor for any purpose for which such use is material under this Act or any other law.

**40.** (1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within three months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making a proprietor a defendant.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any



costs unless he enters an appearance and takes part in the proceedings.

**41.** (1) Where it is proposed that a person should be registered as a registered user of a trade mark the proprietor and the proposed registered user shall make application in writing to the Registrar in the prescribed manner accompanied by an affidavit made by the proprietor or by some person authorised to the satisfaction of the Registrar to act on his behalf—

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restrictions as to persons for whose registration as registered users application may be made ;

(b) stating the goods in respect of which registration is proposed ;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods to the mode or place of permitted use, or to any other matter ;

(d) stating whether the permitted use is to be for a period or without limit of period and if for a period the direction thereof and by such further documents, information or evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, if the Registrar is satisfied that in all the circumstances the use of the trade mark in respect of the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar may think proper, would not be contrary to the public interest, the Registrar may register, subject as aforesaid, the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

(3) The Registrar shall refuse an application under this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(4) The Registrar shall, if so requested by an applicant, take steps for securing that information given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rival in trade.

(5) The Registrar shall issue notice in the prescribed manner—



(a) of the registration of a person as a registered user, to any other registered user, of the trade mark ;

(b) of an application under section 42, to the registered proprietor, and each registered user, (not being the applicant) of the trade mark.

**42.** Without prejudice to the provisions of section 46, the registration of a person as a registered user—

Power to Registrar to vary or cancel registration as registered user.

(a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark ;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark ;

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely :—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use or in such a way as to cause or to be likely to cause, deception or confusion ;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration ;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested ;

(d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

**43.** Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Registered user not to have right of assignment or transmission.

**44.** (1) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept use of a registered associated trade mark, Use of one of associated or substantially identical trade marks equivalent to use of another.



or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall, for the purposes of this Act be deemed to be also a use of any trade mark being a part thereof and registered in accordance with sub-section (1) of section 11 in the name of the same proprietor.

**45.** The application in the State of a trade mark to goods to be exported from the State and any other act done in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within the State would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purposes for which such use is material under this Act or any other law.

(2) The use of a registered trade mark in relation to goods between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods between which and the person using the mark or any predecessor in his business different form of connection in the course of trade subsisted or subsists.

## CHAPTER VII.

### RECTIFICATION AND CORRECTION OF THE REGISTER.

**46.** (1) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention of, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar and the tribunal may make such order for making, expunging or varying the entry as it may think fit.



(3) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(4) The High Court or the Registrar, of its or his own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

**47.** (1) The Registrar may on application made in the prescribed manner by the registered proprietor,—

Correction of register.

(a) correct any error in the name, address or description of the registered proprietor of a trade mark ;

(b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark ;

(c) cancel the entry of a trade mark on the register ;

(d) strike out any goods or classes of goods from those in respect of which a trade mark is registered ;

(e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change in the name, address or description of the registered user.

**48.** (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties, if so required, decide the matter.

(3) Where leave is granted under this section, the trade



mark as altered shall be advertised in the prescribed manner unless the application has already been advertised under sub-section (2).

**49.** (1) The Registrar shall not, in exercise of any power conferred on him under clause (a) of sub-section (2) of section 84, make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods :

Provided that this sub-section shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition of antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be notified to the registered proprietor of the trade mark affected and advertised in the prescribed manner and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

## CHAPTER VIII.

### CERTIFICATION TRADE MARKS.

**50.** Subject to the provisions of this Chapter, the other provisions of this Act except sections 6, 21, 22, 31, 32, 33, 36, 37, 39, 40, 41, 42 and 43 and sub-section (2) of section 45 shall apply to certification trade marks as they apply to trade marks.

**51.** A mark shall not be registerable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified.

**52.** In determining whether a mark is adapted to distinguish in accordance with the provisions of clause (b) of sub-section (1) of section 2, the tribunal may have regard to the extent to which—

(a) the mark is inherently so adapted to distinguish in



relation to the goods in question ; and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact so adapted to distinguish in relation to the goods in question.

**53.** (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 56.

(2) The provisions of section 14 shall have effect in relation to an application under this section as they have effect in relation to an application under the said section, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant as if the application were an application under section 14 and to any other considerations (not being matters within the competence of the Government under section 54) relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

**54.** When authorisation to proceed with an application under section 53 has been given, the Registrar shall forward the application to the Government who shall consider the application with regard to the following matters, namely :—

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered ;

(b) whether the draft of the regulations to be deposited under section 56 is satisfactory ;

(c) whether in all the circumstances the registration applied for would be to the public advantage ; and may either—

(i) direct that the application shall not be accepted ; or

(ii) direct the Registrar to accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which it thinks requisite having regard to any of the said matters ; but, except in the case of a direction



for acceptance and approval without modification and unconditionally, the Government shall not decide the matter without giving to the applicant an opportunity of being heard :

Provided that the Government may, at the request of the applicant, made with the concurrence of the Registrar, consider the application with regard to any of the said matters before authorisation to proceed with the application has been given, so, however, that the Government shall be at liberty to reconsider any matter on which it has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft of the regulations.

**55.** (1) When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 15 shall have effect in relation to the registration of the mark as if the application had been an application under section 14 :

Provided that, in deciding under the said provisions the tribunal shall have regard only to the considerations referred to in sub-section (3) of section 53, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Government under sub-section (2) of this section of any opposition relating to any of the matters referred to in section 54, the Government shall, after hearing the parties, if so required, and considering any evidence, decide whether and subject to what conditions or limitations, or amendments or modifications, if any, of the application or of the regulations to be deposited under section 56, registration is, having regard to those matters to be permitted.

**56.** (1) There shall be deposited at the Patent Office in respect of every mark registered as a certification trade mark regulations approved by the Government for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the certification trade mark, and may contain any other provisions which the Government may by general or special order require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulation) ; and regulations so

Deposit of regulations governing the use of a certification trade mark.



deposited shall be open to inspection in like manner as the register.

(2) The regulations so deposited may on the application of the registered proprietor be altered by the Registrar with the consent of the Government.

(3) The Government may cause such application to be advertised in any case where it appears to it expedient so to do, and where it does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Government shall not decide the matter without giving the parties an opportunity of being heard.

**57.** Subject to the provisions of sections 25, 26 and 58, Right conferred on the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the certification trade mark in relation to those goods, and, without prejudice to the generality of the foregoing provision that right shall be deemed to be infringed by any person who, not being the proprietor of the mark or a person authorised by him in that behalf under the regulations deposited under section 56, using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either ;

(a) as being use as a certification trade mark, or

(b) to import a reference to some person having the right either as proprietor, or by his authorisation under the said regulations, to use the mark, or to goods certified by the proprietor.

**58.** (1) The right to the use of a certification trade mark No infringement in given under section 57 by registration certain circumstances. shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode in relation to goods to be sold or otherwise traded in any place, in relation to goods to be exported to any market, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a certification trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods certified by the proprietor of the mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation



under the relevant regulations has applied the mark and has not consequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark, or

(b) in relation to goods adapted to form part of, or to be accessory to other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor :

Provided that clause (a) shall not apply to the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that clause if such application is contrary to the said regulations.

(3) Where a certification trade mark is one of two or more registered certification trade marks which are identical or nearly resemble each other the use of any of those marks in exercise of the right to the use of that mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those marks.

**59.** (1) The Government may, on the application in the prescribed manner of any person aggrieved or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation, make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds, namely :—

(a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the mark is registered to certify those goods ;

(b) that the proprietor has failed to observe any provision of the deposited regulations to be observed on his part ;

(c) that it is no longer to the public advantage that the mark should be registered ;

(d) that it is requisite for the public advantage that, if the mark remains registered, the regulations should be varied ; and neither the High Court nor the Registrar shall have any jurisdiction to make an order under section 46 on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for



giving effect to any order made under sub-section (1).

**60.** The Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the mark.

Cost not to be awarded in certain cases.

**61.** Save as otherwise expressly provided in this Chapter, every decision of the Government under this Chapter shall be final.

Decision of the Government to be final.

## CHAPTER IX.

### SPECIAL PROVISIONS FOR TEXTILE GOODS.

**62.** The Government shall prescribe classes of goods (in this Chapter referred to as textile goods) to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

Textile goods.

**63.** (1) There shall be kept for the purposes of this Act a record called the Textile Marks Record wherein shall be entered copies of all entries in the register relating to trade marks registered in respect of textile goods and the said record shall at all convenient times be open to the inspection of the public subject to such conditions and restrictions as may be prescribed.

Textile Marks Record.

(2) Trade marks in respect of textile goods of which registration has been refused shall be entered in a list called the Refused Textile Marks List, a copy of which shall be kept at the registered office, and the list and the said copy shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

Restriction on registration of textile goods.

**64.** In respect of textile goods being piece-goods—

(a) no mark consisting of a line heading alone shall be registrable as a trade mark;

(b) a line heading shall not be deemed to be adapted to distinguish;

(c) the registration of a trade mark shall not give any exclusive right to the use of a line heading.

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be



subject to such conditions and restrictions as may be prescribed.

**65.** (1). Applications for the registration of a trade mark in respect of textile goods shall be made to the Registrar.

Registration.

**66.** (1) The Government may in the prescribed manner constitute one or more Advisory Committees of persons versed in the usages of the textile trade for the purpose of this section.

Advisory Committee.

(2) The Registrar shall consult any such Committee with respect to any circumstances peculiar to the textile trade arising on an application to register a trade mark in respect of textile goods.

(3) The place of meeting and the conduct of business of such Committees shall be determined by rules made under this Act.

## CHAPTER X.

### OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

**67.** If any person makes, or cause to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsification of entries in register.

**68.** (1) From such date, not being earlier than one year from the commencement of this Act, as the Government may, by notification in the Government Gazette appoint in this behalf, no person shall make any representation—

Penalty for falsely representing a trade mark as registered.

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark ; or

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark ; or

(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered ; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances



in which, having regard to limitations entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) For the purposes of this section, the use in State in relation to a trade mark of the word 'registered' or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register except—

(a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside State being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside the State in relation solely to goods to be exported to that country.

**69.** If a person without due authority, uses in connection

Restraint of use of  
Royal Arms and State  
emblems. with any trade, business, calling or profession—

(a) the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or

(b) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with His Highness' Government, he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title of the Registrar, be restrained by injunction from continuing so to use the same.

## CHAPTER XI.

### MISCELLANEOUS.

Procedure before the  
Registrar.

**70.** In all proceedings under this Act before the Registrar—



(a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witness, compelling the discovery and production of documents and issuing commissions for the examination of witness ;

(b) evidence shall be given by affidavit provided that the Registrar may, if he thinks fit take oral evidence in lieu of, or in addition to, such evidence by affidavit ;

(c) the Registrar shall not exercise any power vested in him by this Act or the rules made thereunder adversely to any party duly appearing before him without (if required in writing within the prescribed time so to do) giving such party an opportunity of being heard ;

(d) the Registrar may, save as otherwise expressly provided in this Act, and subject to any rules made in this behalf under section 84, make such orders as to costs as he considers reasonable and any such order shall be executable as a decree of a Civil Court.

**71.** In all proceedings under this Act before the Government, evidence shall be given by affidavit, provided that the Government may, if it thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit, and shall for that purpose have all the powers of a Civil Court referred to in clause (a) of section 70.

**72.** Where under this Act an applicant has the option of making an application either to the High Court or to Registrar :—

Procedure in certain cases of option to apply to the High Court or Registrar.

(a) if any suit or other proceedings concerning the trade mark in question is pending before the High Court or a District Court, the application shall be made to the High Court ;

(b) if in any other case the application is made to the Registrar, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the High Court.

**73.** No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

Suits for infringement to be instituted before District Court.

**74.** (1) In any suit or other legal proceedings in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the tribunal,

Appearance of Registrar in proceedings involving rectification of register.



(2) Unless the tribunal otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue, or of the grounds of any decision given by him affecting it, or of the practice of the Patent Office in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the suit or other proceedings.

(3) The costs of the Registrar shall be in the discretion of the tribunal but the Registrar shall not be ordered to pay the costs of any of the parties.

**75.** (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts in the State and in all proceedings without further proof of production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or thing having been done or not done.

**76.** (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Government, from any decision of the Registrar under this Act or the rule made thereunder to the High Court :

Provided that if any suit or other proceeding concerning the trade mark in question is pending before the High Court or a District Court, the appeal shall be made to the High Court.

(2) In an appeal by an applicant for registration against a decision of the Registrar under section 13 or section 14 or section 15, it shall not be open save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be ; and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

(3) Subject to the provisions of this Act and of rules made thereunder the provisions of the Code of Civil Procedure shall apply to appeals before the High Court under this Act.



**77.** The High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

Power to the High Court to make rules.

**78.** If in any legal proceeding in which the validity of the registration of a trade mark comes into question, a question, given in favour of the proprietor of the trade mark, the tribunal may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full costs, charges and expenses as between legal practitioner and client.

Certificate of validity.

**79.** In any suit or other proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or get up legitimately used by other persons.

Trade usage, etc. to be taken into consideration

**80.** Where by or under this Act, any act, other than the making of an affidavit, is required to be done by any person, the act may, subject to prescribed conditions or in special cases with the consent of the Government, be done, in lieu of by that person himself, by a duly authorised agent, being either a legal practitioner or a person registered in the prescribed manner as trade marks agent.

Agents.

**81.** There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by the Government.

Fees.

**82.** The provisions of this Act shall be binding on the Government to be Government.

Government to be bound.

**83.** If at any time after the expiry of six months from the commencement of this section, it is made to appear to the Government that any Government outside the State has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in the State, the Government may, by notification in the Government Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in the State under this Act

Power to make reciprocal arrangements with other Governments.



on his making an application for registration in the State within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.

**84.** (1) The Government may, subject to the condition of previous publication by notification in the Government Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may —

(a) prescribe the classification of goods for the purpose of the registration of trade mark; and empower the Registrar to amend the register so far as may be necessary for the purpose of adapting the entries therein to any amended or substituted classification which may be prescribed;

(b) require the making of duplicates of trade marks and other documents connected therewith;

(c) provide for securing and regulating the publication, sale or distribution of copies of trade marks and other documents connected therewith;

(d) prescribe additional matters to be entered in the register;

(e) prescribe the conditions and restrictions subject to which the register, the Textile Marks Record and the Refused Textile Marks List may be inspected;

(f) prescribe the form of certificates of registration;

(g) prescribe the conditions under which a trade mark removed from the register may be restored under sub-section (3) of section 18;

(h) prescribe the further documents, information or evidence to accompany an application under sub-section (1) of section 41;

(i) prescribe classes of goods as textile goods for the purposes of Chapter IX;

(j) provide for the constitution of Advisory Committees referred to in section 66, and prescribe the places of meeting, and conduct of business at meetings, of such Committees;

(k) regulate the awarding of costs by the Registrar under section 70;

(l) prescribe the conditions subject to which an agent referred to in section 80 may act;

(m) prescribe the fees to be paid under this Act;

(n) provide for the establishment of branches of the Trade Marks Registry when expedient for facilitating the



working of this Act, and authorities the preparation of copies of the register to be kept at such branch offices ;

(o) prescribe the manner in which, in proceedings under this Act, before the Government or the Registrar, applications shall be made, notices given and matters advertised ;

(p) prescribe times or periods required by this Act to be prescribed ;

(q) provide, generally for regulating the business of the Trade Marks Registry and of branches established under clause (n) or under section 63, and for regulating all things by this Act placed under the direction or control of the Government or the Registrar.

**85.** The Government may, by notification in the Government Gazette, provide such procedure as it considers expedient to enable intending applicants to deposit trade marks at the Patent Office before the coming into force of the remaining provisions of this Act :

Provided that the deposit of a trade mark under this section shall not affect any right, existing or accruing in the trade mark.

## THE JAMMU AND KASHMIR DRUGS ACT, 2000.

### Act No. XX of 2000.

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## THE JAMMU AND KASHMR DRUGS ACT, 2000.

### Act No. XX of 2000.

[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000/and published in the Government Gazette dated 21st Magh 2000 3rd/February 1944.]

### An Act to regulate the import, manufacture, distribution and sale of drugs.

**WHEREAS** it is expedient to regulate the import into, and the manufacture, distribution and sale in the State of drugs ; it is hereby enacted as follows :—

Preamble.



## CHAPTER I.

## INTRODUCTORY.

1. (1) This Act may be called the Jammu and Kashmir  
Short title, extent and commencement. Drugs Act, 2000.

(2) It extends to the whole of the Jammu and Kashmir State.

(3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.

2. The provisions of this Act shall be in addition to, and  
Application of other laws not barred. not in derogation of, the Dangerous Drug Rules, made under the Jammu and Kashmir Excise Act, 1958, and any other law for the time being in force.

3. In this Act, unless there is anything repugnant in the subject or context.—  
Definitions.

(a) “the Board” means the Drugs Advisory Board constituted under section 5 ;

(b) “drug” includes all medicines for internal or external use of human beings or animals, and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals, other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine ;

(c) “to import” with its grammatical variations and cognate expressions, means to bring into the State ;

(d) “patent or proprietary medicine” means a drug which is a remedy or prescription prepared for internal or external use of human beings or animals, and which is not for the time being recognised by the permanent Commission on Biological Standardisation of the League of Nations or in the latest edition of the British Pharmacopeia or the British Pharmaceutical Codex or any other Pharmacopeia authorised in this behalf by the Government after consultation with the Board ;

(e) “prescribed” means prescribed by rules made under Chapter II or Chapter IV by the Government.

4. Any substance specified as poisonous by rules made  
Presumption as to poisonous substances. under Chapter IV shall be deemed to be a poisonous substance for the purposes of Chapter III or Chapter IV, as the case may be.



## CHAPTER II.

## THE DRUGS ADVISORY BOARD AND THE DRUG LABORATORY.

5. (1) The Government shall, as soon as may be possible constitute a Board (to be called the Drugs Advisory Board) to advise the Government on technical matters arising out of the administration of this Act and to carry out the other functions assigned to it by this Act.

(2) The Board shall consist of the following members, namely :—

- (i) the Director of Medical Services *ex-officio*, who shall be Chairman ;
- (ii) the Director or Pharmacologist of the Drug Research Laboratory ;
- (iii) one of the Deputy Directors Medical Services, to be nominated by the Director of Medical Services ;
- (iv) the Chemical Examiner ;
- (v) the Superintendent of Jammu or Srinagar Hospital ;
- (vi) two private medical practitioners, one to be elected by the Medical Association Jammu and one by the Medical Association Kashmir.
- (vii) two persons of the pharmaceutical profession to be nominated by the Government, one from the Jammu Province and one from the Kashmir Province.

(3) The nominated and elected members of the Board shall hold office for three years, but shall be eligible for re-nomination or re-election.

(4) The Board may, subject to the previous approval of the Government, make bye-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods, not exceeding three years, as it may decide, or temporarily for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Government shall appoint a person to be Secretary of the Board and shall provide the Board with such clerical and other staffs as the Government consider necessary.



**6.** (1) The Government shall direct the Drug Research Laboratory to carry out the functions entrusted to it by this Act or any rules made under this Chapter.

(2) The Government may after consultation with the Board, make rules prescribing—

- (a) the functions of the Drug Research Laboratory ;
- (b) the procedure for the grant of certificates of registration under this Act by the said Laboratory in respect of patent or proprietary medicines not having displayed on the label or container thereof the true formula of list of ingredients contained therein in a manner readily in forms of such certificates and the fees payable therefor ;
- (c) the procedure for preserving the secrecy of the formulae of patent or proprietary medicines when disclosed to the said Laboratory under this Act ;
- (d) the procedure for the submission to said Laboratory under Chapter IV of samples of drugs for analysis or test, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports ; and
- (e) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

### CHAPTER III.

#### IMPORT OF DRUGS.

**7.** (1) For the purposes of this Chapter and Chapter IV, the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

(2) The Government, after consultation with the Board and after giving, by notification in the Government Gazette not less than three months' notice of their intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter and Chapter IV, thereupon the Schedule shall be deemed to be amended accordingly.

**8.** For the purposes of this Chapter and Chapter IV, a drug shall be deemed to be misbranded—

Misbranded drugs.

- (a) if it is an imitation of, or substitute for or resembles



in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or

- (b) if it purports to be the product of a place or country of which it is not truly a product ; or
- (c) if it is imported under a name which belongs to another drug ; or
- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or
- (e) if it is made to appear of better or greater therapeutic value than it really is ; or
- (f) if it is not labelled in the prescribed manner ; or
- (g) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular ; or
- (h) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

9. From such date as may be fixed by the Government by notification in the Government Gazette in this behalf, no person shall import :—

Prohibition of import  
of certain drugs.

- (a) any drug which is not of standard quality ;
- (b) any misbranded drug ;
- (c) any drug for the import of which a licence is prescribed, otherwise than under, and in accordance with such licence ;
- (d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted in the prescribed manner in respect of such medicine by the Drug Research Laboratory after being correctly informed of the formula of such medicine ;
- (e) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed :



Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis or for personal use :

Provided further that the Government may after consultation with the Board, by notification in the Government Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in clause (d) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

**10.** The law for the time being in force relating to Customs and to goods, the import of which is prohibited by an order made by the Government under section 25 of the Jammu and Kashmir Customs Act, 1958 shall, subject to the provisions of section 11 of this Act, apply in respect of drugs the import of which is prohibited under this Chapter, and officers of Customs and Officers empowered under that Act to perform the duties imposed thereby on the Inspector General of Customs and Excise and other officers of Customs shall have the same powers in respect of such drugs as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of section 1, the Inspector General of Customs and Excise, or any officer authorised by the Government in this behalf, may detain any imported package which he suspects to contain any drug the import of which is prohibited under this Chapter, and shall forthwith report such detention to the Director of the Drug Research Laboratory and if required by him, forward the package or samples of any suspected drug found therein to the said Laboratory.

**11.** (1) Whoever contravenes any of the provisions of this Chapter shall, in addition to any penalty to which he may be liable under the provisions of section 10, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees or with both.

(2) Whoever, having been convicted under sub-section (1),



is again convicted under that sub-section shall, in addition to any penalty as aforesaid, be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

**12.** Where any offence punishable under section II has been committed the consignment of the drug in respect of which the offence has been committed shall be liable to confiscation.

Confiscation.

Jurisdiction.

**13.** No Court inferior to that of a Magistrate of the first class shall try an offence punishable under section II.

## CHAPTER IV.

### MANUFACTURE, SALE AND DISTRIBUTION OF DRUGS.

**14.** From such date as may be fixed by the Government by notification in the Government Gazette in this behalf, no person shall himself or by any other person on his behalf :—

(a) manufacture for sale, or sell or stock or exhibit for sale or distribute—

(i) any drug which is not of standard quality ;

(ii) any misbranded drug ;

(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of certificate of registration granted, in the manner prescribed by the Government in respect of such medicine by the Drug Research Laboratory after being correctly informed of the formula of such medicine ;

(iv) any drug which by means of any statement, design or device accompanying it or by any other means purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed ;

(v) any drug, in contravention of any of the provisions of this Chapter or any rule made thereunder ;

(b) sell, or stock or exhibit for sale, or distribute any drug which has been imported or manufactured in



contravention of any of the provisions of this Act or any rule made thereunder ;

(c) manufacture for sale, or sell or stock or exhibit for sale, or distribute any drug, except under, and in accordance with the condition of a licence issued for such purpose under this Chapter :

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions of small quantities of any drug for the purposes of examination, test or analysis :

Provided further that the Government may, after consultation with the Board, by notification in the Government Gazette, permit subject to any conditions specified in the notification the manufacture for sale or distribution of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in sub-clause (iii) of clause (a) shall be deemed to be true and a sufficient compliance with that sub-clause if without disclosing a full and detailed recipe of the ingredients it indicates correctly all the potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

**15.** (1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug in respect of which the offence has been committed or of the circumstances of its manufacture or import or that a purchaser having bought only for the purpose of test or analysis has not been prejudiced by the sale.

(2) For the purposes of section 14 a drug shall not be deemed to be misbranded or to be below standard quality only by reason of the fact that :—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug or to conceal its inferior quality or other defects ; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it ; provided that this clause shall not apply in relation to any sale or distribution of the drug occurring after the vendor or distributor became aware of such intermixture.

(3) A person not being the manufacturer of a drug or



his agent for the distribution thereof, shall not be liable for a contravention of section 14 if he proves:—

(a) that he did not know, and could not with reasonable diligence have ascertained, that the drug in any way contravened the provision of that section and that the drug while in his possession remained in the same state as when he acquired it ; or

(b) that he acquired the drug from a person resident in the State under a written warranty in the prescribed form and signed by such person that the drug does not in any way contravene the provisions of section 14, and that the drug while in his possession remained in the same state as when he acquired it :

Provided that a defence under clause (b) shall be open to a person only—

(i) if he has, within seven days of the service on him of the summons, sent to the Inspector a copy of the warranty with a written notice stating that he intends to rely upon it and giving the name and address of the warrantor and

(ii) if he proves that he has within the same period, sent written notice of such intention to the said warrantor.

**16.** The Government may, by notification in the Government Gazette, appoint such persons as they think fit, having the prescribed qualifications, to be Government Analysts for such areas and in respect of such drugs or classes of drugs as may be specified in the notification.

**17.** (1) The Government may, by notification in the Government Gazette, appoint such persons as they think fit, having the prescribed qualifications, to be Inspectors for the purposes of this Chapter within such local limits as the Government may assign to them respectively :

Provided that no person who has any financial interest in the manufacture, import or sale of drugs shall be appointed to be an Inspector under this sub-section.

(2) Every Inspector shall be deemed to be a public servant within the meaning of the Ranbir Penal Code and shall be officially subordinate to such authority as the Government may specify in his behalf.

**18.** Subject to the provisions of section 19 and of any rules made by the Government in this behalf, an Inspector may within the local limits for which he is appointed—

(a) inspect any premises wherein any drug is being manufactured and in the case of sera, vaccines and any other



drug prescribed in this behalf the plant and process of manufacture and the means employed for standardizing and testing the drugs ;

(b) take samples of any drug which is being manufactured, or being sold or is stocked or exhibited for sale, or is being distributed ;

(c) where he has reason to believe that any drug which is being manufactured for sale, or being sold or is stocked or exhibited for sale, or is being distributed, contravenes any of the provisions of section 14, order in writing the persons, in whose possession such drug may be not to dispose of any stock of such drug for specified period not exceeding 10 days or, unless the alleged contravention is such that the defect may be removed by the possessor of the drug, seize the stock of such drug ; Provided that the Inspector shall not take any action under this clause unless he has reported the facts to the District Magistrate, or the Additional District Magistrate or the Sub-Divisional Magistrate and has been authorized by him to take such action ;

(d) for any of the aforesaid purposes enter at all reasonable times with such assistants, if any, as he considers necessary, any premises wherein any drug is being manufactured or being sold or is stocked or exhibited for sale, or is kept for distribution ;

(e) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

**19.** (1) Where an Inspector takes any sample of a drug under this Chapter, he shall tender its fair price and may require a written acknowledgement therefor.

Procedure of Inspectors.

(2) Where the price tendered under sub-section (1) is refused ; or where the Inspector seizes the stock of any drug under clause (c) of section 18, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked :

Provided that where the sample is taken from premises whereon the drug is being manufactured, it shall be necessary to divide the sample into three portions only :



Provided further that where the drug is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second he shall produce in the Court before which proceedings, if any, are instituted in respect of the drug; and

(iii) the third, where taken, he shall send to the warrantor, if any, named under the proviso to sub-section (3) of section 15.

(5) Where an Inspector takes any action under clause (c) of section 18:—

(a) he shall use all despatch in ascertaining whether or not the drug contravenes any of the provisions of section 14 and, if it is ascertained that the drug does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the drug, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

**20.** Every person for the time being in charge of any

premises whereon any drug is being manufactured or is kept for sale or distribution shall, on being required by an

Inspector so to do, be legally bound to disclose to the Inspector the place where the drug is being manufactured or is kept, as the case may be.

**21.** (1) The Government Analyst to whom a sample of

any drug has been submitted for test or analysis under sub-section (4) of section

19, shall deliver to the Inspector submitting it a signed

Persons bound to disclose place where drugs are manufactured or kept.

Reports of Government Analysts.



report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the warrantor, if any, named under the proviso to sub-section 3 of section 15 and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein and such evidence shall be conclusive unless the person from whom, the sample was taken or the said warrantor, has within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

(4) Unless the sample has already been tested or analysed in the Drug Research Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contravention of a Government Analyst's report the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug produced before the Magistrate under sub-section (4) of section 19 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of the Director of Drug Research Laboratory the result thereof and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Drug Research Laboratory under sub-section (4) shall be paid by the complainant or the accused as the Court shall direct.

**22.** A person shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug purchased by him and to receive a report of such test or analysis signed by the Government Analyst.

**23.** Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale, or distributes any drug in contravention of any of the provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalty for manufacture, sale etc. of drugs in contravention of this Chapter.

manufactures for sale, sells, stocks or exhibits for sale, or distributes any drug in contravention of any of the provisions of this Chapter or any rule made thereunder



**24.** Whoever, in respect of any drug sold by him whether as principal or agent, gives to the purchaser a false warranty that the drug does not in any way contravene the provisions of section 14 shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever applies or permits to be applied to any drug sold, or stocked or exhibited for sale, by him, whether on the container or label or in any other manner, a warranty given in respect of any other drug shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

**25.** Whoever uses any report of a test or analysis made by the Drug Research Laboratory or by a Government Analyst, or any extract from such report for the purpose of advertising any drug shall be punishable with fine which may extend to five hundred rupees.

**26.** Whoever, having been convicted of any offence under section 23 or section 24 or section 25, is again convicted of an offence under the same section shall be punishable with imprisonment which may extend to two years or with fine which may extend to one thousand rupees or with both.

**27.** Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rules made in this behalf, the stock of the drug in respect of which the contravention has been made shall be liable to confiscation.

**28.** (1) No prosecution under this Chapter shall be instituted except by an Inspector.

(2) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Chapter.

**29.** The Government may, after consultation with the Board and after previous publication by notification in the Government Gazette,



make rules for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may —

(a) provide for the establishment of laboratories for testing and analysing drugs ;

(b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors ;

(c) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality ;

(d) prescribe in respect of biological and organometallic compounds, the units or method of standardization ;

(e) prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of drugs, or any specified drug or class of drugs, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor ;

(f) specify the diseases or ailments which a drug may not purport or claim to cure or mitigate and such other effects which a drug may not purport or claim to have ;

(g) prescribe the conditions subject to which small quantities of drugs may be manufactured for the purpose of examination, test or analysis ;

(h) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified drug or class of drugs and prohibit the sale, stocking or exhibition for sale, or distribution of the said drug or class of drugs after the expiry of a specified period from the date of manufacture or after the expiry of the date of potency ;

(i) prescribe the conditions to be observed in the packing in bottles, packages and other containers of drugs, and prohibit the sale, stocking or exhibition for sale, or distribution of drugs packed in contravention of such conditions ;

(j) regulate the mode of labelling packed drugs and prescribe the matters which shall or shall not be included in such labels ;

(k) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any drug, prohibit the manufacture, sale or stocking or exhibition for sale or distribution of any drug in which that proportion is exceeded, and specified substances which shall be deemed to be poisonous for the purposes of this Act and the rules made thereunder ;



(l) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any patent or proprietary medicine containing such drug ;

(m) prescribe the form of warranty referred to in subsection (a) (b) of section 15 ;

(n) regulate the powers and duties of Inspectors ;

(o) prescribe the form of report to be given by Government Analysts, and the manner of application for test or analysis under section 22 and the fees payable therefor ;

(p) specify the offences against this Chapter or any rule made thereunder in relation to which the stock of the drug shall be liable to confiscation under section 27 ;

(q) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Act or the rules made thereunder of any specified drug or class of drugs.

**30.** No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Protection to persons  
acting under this Act.

### THE SCHEDULE.

(See section 7)

*Standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale or distributed.*

Class of drugs.	Standard to be complied with.
1. Patent of proprietary medicines.	The formula or list of ingredients displayed in the prescribed manner on the label or container, or the formula disclosed or to the Drug Research Laboratory, as the case may be.
2. Substances commonly known as vaccines sera, toxins, exoids, anti-toxins and antigens and biological products of such nature.	The standards maintained at the National Institute and Medical Research, London and such further standards of strength, quality and purity as may be prescribed.



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|---|--|
| 4. Vitamins, hormones and analogous products. | The standards maintained at the National Institute for Medical Research, London and such further standards of strength, quality and purity as may be prescribed.   |
| 4. Other drugs                                | ... The standard of identity, purity and strength specified in the latest edition of the British Pharmacopeia or the British Pharmaceutical Codex or any other prescribed pharmacopeia, or adopted by the Permanent Commission on Biological Standardisation of the League of Nations. |
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## THE JAMMU AND KASHMIR VENEREAL DISEASES ACT, 2000.

### Act No. XXI of 2000.

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| 6. Duty of person suffering from a venereal disease to offer for examination and undergo treatment. | 12. Prosecution for offences under sections 3 and 6 of this Act. |
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# THE JAMMU AND KASHMIR VENEREAL DISEASES ACT, 2000.

Act No. XXI of 2000.

*[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Magher 2000 and published in the Government Gazette dated 21st Magh 2000/3rd February 1944.]*

## An Act to provide for the Registration of persons suffering from venereal diseases and their treatment.

WHEREAS it is expedient to provide for the registration of persons suffering from venereal diseases and their treatment; It is hereby enacted as follows:—

Preamble.

1. (i) This Act may be called the Jammu and Kashmir Venereal Diseases Act, 2000.

Short title, extent and commencement.

(ii) It extends to the District of Udhampur and the Tehsils of Basohli and Reasi of Kathua and Reasi Districts respectively.

The Government may, by notification in the Government Gazette, extend it to the whole or any specified part of the State.

(iii) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.

2. Unless there is anything repugnant in the subject or context:—

Definitions.

(i) "venereal disease" includes syphilis, gonorrhoea, chandroid, granuloma venereum;

(ii) "Government dispensary" includes a Government hospital or a centre opened by the Government for the purpose of diagnosis and treatment of persons suffering from venereal diseases;

(iii) "Medical Officer" means the Medical Officer-in-charge of a Government dispensary;

(iv) "prescribed" means prescribed by rules made under this Act.

3. Every person knowing that he is suffering from a venereal disease shall have his name and other prescribed particulars registered in the manner indicated in section 4 of the Act.

Duty of person suffering from a venereal disease to have his name etc registered.



**4.** Every Medical Officer shall maintain a register in Maintenance of a the prescribed form and shall enter or register. cause to be entered therein the names and other prescribed particulars of persons suffering from a venereal disease and ordinarily residing within his jurisdiction.

**5.** Every medical practitioner including a Hakim or a Vaid who in the course of his professional Duty of Medical Practitioner. duty or otherwise comes to know that any person is suffering from a venereal disease, shall forthwith report the name and such other particulars of such person as are within his knowledge to the Medical Officer within whose jurisdiction such person ordinarily resides.

**6.** Every person suffering from a venereal disease shall offer himself for examination for the purposes of diagnosis and treatment of such disease before any qualified Hakim, Vaid or other medical practitioner and shall undergo such treatment as such Hakim, Vaid or medical practitioner may prescribe for him.

**7.** The Government shall provide free of charge facilities necessary for examination, diagnosis and treatment of venereal diseases in the existing dispensaries and such other dispensaries as the Government may open in different localities, for male as well as for female patients.

**8.** Any medical officer or qualified private or subsidized medical practitioner shall be entitled to obtain free of cost a scientific report from any Government clinic or laboratory on any material which such medical practitioner may submit from a patient suspected to be suffering from a venereal disease.

**9.** All information obtained regarding diagnosis and treatment of any person suffering from a venereal disease shall be regarded as strictly confidential.

**10.** (1) Whoever contravenes any of the provisions of sections 3, 5, 6, and 9 of this Act shall be punishable with fine which may extend to twenty-five rupees.

(2) Whoever, having been convicted under sub-section (1), is again convicted under that sub-section shall be punishable with a fine which may extend to one hundred rupees.

**11.** (1) The Government may make rules for carrying out the provisions of this Act.



(2) In particular and without prejudice to the generality of the foregoing power such rules may:—

(a) prescribe the form of the register to be maintained under section 4 ;

(b) specify the particulars to be given by a person registering his name under section 3 ;

(c) provide for the distribution of anti-venereal drugs amongst the private medical practitioners and the minimum qualifications of such medical practitioners ; and

(d) provide for the examination, diagnosis and treatment of females suffering from a venereal disease.

**12.** No Court shall take cognizance of an offence under sections 3 and 6 of this Act, except on the complaint of a Medical officer.

■ Prosecution for offences under sections 3 and 6 of this Act.

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# LAWS OF JAMMU AND KASHMIR.

(Being a collection of all the enactments whether passed by the Praja Sabha and assented to by His Highness the Maharaja Bahadur or made and issued by His Highness, and in force in the Jammu and Kashmir State.)

## SUPPLEMENT 2000.



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**Prefaratory Note.**

Supplement for S. 2000 to the Laws of Jammu and Kashmir is published to make the laws up to-date. It contains all the Acts of Samvat year 2000. It is proposed to issue every year an annual supplement until a revised edition of the Laws of Jammu and Kashmir is published.

Correction slips for every year issued by the Law Department are supplied by the Press on moderate price.

(Sd.) BADRI NATH,

*Deputy Legal Remembrancer.*

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**THE JAMMU AND KASHMIR SUGAR  
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**THE JAMMU AND KASHMIR SUGAR (EXCISE DUTY)  
ACT, 2000.**

**Act No. VI of 2000.**

*[Received assent of His Highness the Maharaja Bahadur on 24th May 1943/11th Jeth 2000 and published in the Government Gazette dated 21st Sawan 2000/5th August 1943.]*

**An Act to provide for the imposition and collection of excise duty on sugar.**

WHEREAS it is expedient to impose an Excise Duty on sugar produced in factories and to provide for the collection thereof ; It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir Sugar (Excise Duty) Act, 2000.

Short title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.



(3) The Act shall come into force on such date as the Government may by notification in the Government Gazette appoint in this behalf.

**2.** In this Act unless there is anything repugnant in the subject or context,—

Definitions.

(a) “factory” means any premises in any part of which any manufacturing process connected with the production of sugar is being carried on or is ordinarily carried on with the aid of power ;

(b) “owner” includes any person expressly or impliedly authorised by the owner of a factory to be his agent in respect of such factory ;

(c) “sugar” means any form of sugar containing more than ninety per cent of sucrose ;

(d) “khandsari sugar” means sugar in the manufacture of which neither a vacuum pan nor a vacuum evaporator is employed ; and

(e) “palmyra sugar” means sugar manufactured from jaggery obtained by boiling the juice of the palmyra palm.

**3.** (1) A duty of excise shall be levied on all sugar produced in any factory in the State and either issued out of such factory on or after the day of coming into force of this Act, or used within such factory on or after the said date in the manufacture of any commodity other than sugar, and shall be payable by the owner of the factory.

(2) The duty payable under sub-section (1) shall be at the following rates, namely :—

(i) on khandsari sugar at the rate of two rupees and twelve annas per maund ;

(ii) on all other sugar except palmyra sugar at the rate of three rupees and four annas per maund ;

(iii) on palmyra sugar at such rate, if any, as may be fixed in this behalf by the Government after such enquiry as they may think fit.

**4.** (1) If any duty payable under section 3 is not paid within the time fixed by rules made in that behalf under this Act, it shall be deemed to be an arrear, and the authority to which such duty is payable may, in lieu thereof, recover any sum not exceeding double the amount of duty unpaid which such authority may in its discretion think it reasonable to require.

(2) An arrear of duty, or any sum recoverable in lieu thereof under this section shall be recoverable as an arrear of



land revenue and shall be recoverable in addition to, and not in substitution for, any other penalty incurred under this Act.

**5.** No person shall issue any sugar out of a factory except in accordance with the provisions of rules made in that behalf under this Act, or, until such rules are made in accordance with the general or special orders of the Government.

Issue of sugar from factory.

5

**6.** Whoever contravenes the provisions of section 5 shall be punishable with fine which may extend to two thousand rupees.

Penalty for issue of sugar from factory in contravention of section 5

**7.** Whoever evades or attempts to evade the payment of any duty payable by him under this Act, or fails to supply any information which he is required by any rule made under this Act to supply, or knowingly supplies false information, shall be punishable with imprisonment, which may extend to six months or with fine which may extend to two thousand rupees, or with both.

Penalty for evasion of duty or failure to supply information.

**8.** Any Court trying an offence under this Act may order that any sugar, together with the packages or coverings thereof, in respect of which the Court is satisfied that an offence under this Act has been committed, shall be forfeited to His Highness the Maharaja Bahadur.

Power of Court to order forfeiture of sugar

**9.** The Government may, by notification in the Government Gazette, declare that any of the provisions of the Jammu and Kashmir Customs Act, 1958 relating to the levy of and exemption from customs duties, drawback of duty, warehousing offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adopt them to the circumstances, be applicable in regard to like matters in respect of the duty on sugar imposed by section 3.

Application of the provisions of Customs Act to the duty on sugar.

**10.** (1) The Government may by notification in the Government Gazette, make rules to carry into effect the purposes and objects of this Act.

Power of Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the assessment and collection of the duty and the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment



the manner in which the duty shall be payable, and the recovery of arrears ;

(b) regulate the issue of sugar out of or the use of sugar in the manufacture of commodities within any factory and provide for the appointment of officers of the State to supervise within any factory such issue or use ;

(c) impose on the owners of factories, and on persons engaged in the sale of sugar, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified ;

(d) provide for the detention of sugar for the purpose of exacting the duty, the confiscation otherwise than under section 8 of sugar in respect of which breaches of the Act or rules have been committed and the disposal of sugar so detained or confiscated ;

(e) authorise and regulate the inspection or search of any place or conveyance used for the manufacture, storage or carriage of sugar ; and

(f) authorise and regulate the composition of offences against or liabilities incurred under the Act and rules.

(3) In making any rule under this section the Government may provide that a breach of the rules shall, where no other penalty is provided by this Act, be punishable with fine not exceeding two thousand rupees.

## **THE WORKMEN'S COMPENSATION ACT, 2000.**

### **Act No. VII of 2000.**

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**THE WORKMEN'S COMPENSATION ACT, 2000.****Act No. VII of 2000.**

*[Received assent of His Highness the Maharaja Bahadur on 24th May 1943/11th Jeth 2000 and published in the Government Gazette dated 28th Sawan 2000/12th August 1943.]*

**An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.**

WHEREAS it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident ; It is hereby enacted as follows :—

Preamble.

**CHAPTER I.****PRELIMINARY.**

**1.** (1) This Act may be called the Workmen's Compensation Act, 2000.

Short title.

(2) It extends to the whole of the Jammu and Kashmir State.

Extent.

**2.** (1) In this Act unless there is anything repugnant in the subject or context :—

Definitions.

(a) "adult" and "minor" mean respectively a person who is not and a person who is under the age of 15 years ;

(b) "commissioner" means a commissioner appointed for workmen's compensation under section 20 ;

(c) "compensation" means compensation as provided for by this Act ;

(d) "dependant" means any of the following relatives of a deceased workman, namely,—

(i) a widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother ; and

(ii) if wholly or in part dependent on the earnings of the workman at the time of his death, a widower, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter



in-law, a minor child of a deceased son, a minor child of a deceased daughter where no parent of the child is alive, or where no parent of the workman is alive a paternal grandparent ;

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into contract of service or apprenticeship means such other person while the workman is working for him ;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager sub-ordinate to an employer ;

(g) "partial disablement" means where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time ; provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement ;

(h) "prescribed" means prescribed by rules made under this Act ;

(i) "qualified medical practitioner" means any person registered under the Jammu and Kashmir Medical Registration Act, 1998 ;

(j) "total disablement" means such disablement whether of a permanent or of a temporary nature as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement ; provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I, where the aggregate percentage of the loss of earning capacity, as specified in that schedule against those injuries, amounts to one hundred per cent ;

(k) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman



to cover any special expenses entailed on him by the nature of his employment ;

(1) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is on monthly wages not exceeding one hundred rupees in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing but does not include any person working in the capacity of a member of His Highness' Forces and any reference to a workman who has been injured shall, when the workman is dead, include a reference to his dependents, or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department of the Government, shall for the purposes of this Act, unless a contrary intention appears be deemed to be the trade or business of such authority or department.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may by a like notification add to Schedule II any class of persons employed in any occupation which they are satisfied is a hazardous occupation and the provisions of this Act shall thereupon apply to such class of persons :

Provided that in making such addition the Government may direct that the provisions of this Act shall apply to such classes of persons for specified injuries only.

## CHAPTER II.

### WORKMEN'S COMPENSATION.

**3.** (1) If personal injury is caused to a workman by  
Employer's liability for compensation. accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter, provided that the employer shall not be so liable :—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding seven days ;

(b) in respect of any injury not resulting in death caused by an accident which is directly attributable to :—

(i) the workman having been at the time thereof



- under the influence of drink or a drug, or
- (ii) the wilful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workmen, or
  - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

(2) If a workman employed in any employment specified in part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in part B of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

*Explanation.*—For the purpose of this sub-section, a period of service shall be deemed to be continuous which has not included a period of service under any other employer in the same kind of employment.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided in sub-sections (2) and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil Court a suit for damages in respect of the injury against the employer or any other



person ; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury :—

(a) if he has instituted a claim to compensation in respect of the injury before a commissioner ; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

4. (I) Subject to the provisions of this Act the amount of compensation shall be as follows, viz :—

A. where death results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof, and

(ii) in the case of a minor—two hundred rupees.

B. Where permanent total disablement results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and

(ii) in the case of a minor—twelve hundred rupees.

C. Where permanent partial disablement results from the injury—

(i) in the case of an injury specified in Schedule I such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury ; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

*Explanation.*—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which should have been payable if permanent total disablement has resulted from the injuries.

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the 16th day after the expiry of a waiting period of seven days from the date of the disablement, and there-



after half-monthly during the disablement or during a period of five years, whichever period is shorter—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule III of the sum shown against such limits in the fourth column thereof, and

(ii) in the case of a minor of one-half of his monthly wages subject to a maximum of thirty rupees :

Provided that (a) there shall be deducted from any lump-sum or half monthly payments to which the workman is entitled, the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump-sum or of the first half-monthly payment, as the case may be, and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half month a sum proportionate to the duration of the disablement in that half month.

5. For the purposes of this Act the monthly wages of a workman shall be calculated as follows, namely :—

Method of calculating wages.

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period ;

(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of a workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or if there was no workman so employed, by a workman employed on similar work in the same locality ;

(c) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous



period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period.

*Explanation.*—A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

**6.** (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a commissioner may be reviewed by the commissioner, on the application of either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lumpsum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

**7.** Any right to receive half-monthly payments may, by agreement between the parties, or if the parties cannot agree and the payments have been continued for not less than six months on the application of either party to the commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the commissioner, as the case may be.

**8.** (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased workman an employer may make to any dependent advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependent, shall be deducted by the commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten rupees



which is payable as compensation may be deposited with the commissioner on behalf of the person entitled thereto.

(3) The receipt of the commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman the commissioner shall deduct therefrom the actual costs of the workman's funeral expenses to an amount not exceeding twenty-five rupees and pay the same to the person by whom such expenses were incurred and shall, if he thinks necessary, cause notice to be published or to be served on each dependent in such manner as he thinks fit calling upon the dependents to appear before him, personally or through some attorney, or for determining the distribution of compensation. If the commissioner is satisfied, after any inquiry which he may deem necessary that no dependent exists he shall repay the balance of the money to the employer by whom it was paid. The commissioner shall, on application, by the employer, furnish a statement showing in details all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall subject to any deduction made under sub-section (4) be apportioned among the dependents of the deceased workman or any of them in such proportion as the commissioner thinks fit or may in the discretion of the commissioner be allotted to any one dependent.

(6) When any compensation deposited with the commissioner is payable to any person, the commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump-sum deposited with the commissioner is payable to a woman or a person under a legal disability such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability the commissioner may of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependent of the workman or to any other person whom the commissioner thinks best fitted to provide for the welfare of the workman.

(8) Where, on application made to him in this behalf or otherwise, the commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or any



other sufficient cause, an order of commissioner as to the distribution of any sum paid as compensation, or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with ought to be varied the commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made or shall be made in any case in which it would involve the repayment by a dependent of any sum already paid to him.

(9) Where the commissioner varies any order under sub-section (8) by reason of the facts that payment of compensation to any person has been obtained by fraud, impersonation or other improper means any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

**9.** Save as provided by this Act, no lump-sum of half-monthly payment under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

**10.** (1) No claim for compensation shall be entertained by a commissioner unless notice of the accident has been given, in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within one year of the occurrence of the accident or, in case of death within one year from the date of death :

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Provided further that the want of or any defect, or irregularity in a notice shall not be a bar to the entertainment of a claim---

(a) if a claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the



workman died on such premises or at such place or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of the several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further, that the commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given or the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened and shall be served on the employer or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to injured workman employed on the premises and to any person acting *bonafide* on his behalf.

(4) A notice under this section may be served by delivering it at or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served, or where a notice book is maintained by entry in the notice book.

**11.** (1) Where a commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement in the prescribed form, giving the circumstances attending the death of the workman and indicating whether in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation he shall make the deposit within thirty days of the service of notice.

Power to require from employers statements regarding fatal accident



(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the commissioner after such inquiry as he may think fit, may inform any of the dependents of the deceased workman that it is open to the dependents to prefer a claim for compensation, and may give them such other further information as he may think fit.

**12.** (1) Where, by any law for the time being in force, <sup>Report of fatal accidents.</sup> notice is required to be given to any authority by or on behalf of the employer, of any accident occurring on his premises which result in death, the person required to give the notice shall, within seven days of the death, send a report to the commissioner giving the circumstances attending the death :

Provided that where the Government has so prescribed the person required to give the notice may instead of sending such report to the commissioner send it to the authority to whom he is required to give the notice.

(2) The Government may, by notification in the Government Gazette, extend the provisions of sub-section (1) to any class or premises other than those coming within the scope of that sub-section and may, by such notification, specify the persons who shall send the report to the commissioner.

**13.** (1) Where a workman has given notice of an accident, <sup>Medical examination.</sup> he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time :

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.



(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leave without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman whose right to compensation has been suspended under sub-section (2) or sub-section (3) dies without having submitted himself for medical examination as required by either of those sub-sections, the commissioner may, if he thinks fit, direct the payment of compensation to the dependents of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner whose instructions he had followed and compensation if any shall be payable accordingly.

**14.** (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that

Contracting.



workman had been immediately employed by him, and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes as the case may be, to execute the work or which are otherwise under his control or management.

**15.** Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 14 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

**16.** (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon



any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer so however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia) the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurer of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under order 21-A of the Jammu and Kashmir Code of Civil Procedure or under section 230 of the Companies Act, 1977, or in the distribution of the property of an insolvent or in the distribution of the assets of the company being wound up to be paid in priority to all other debts, the amounts due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof, shall for the purposes of this section, be taken to be the amount of the lump-sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound



up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

**17.** The Government may by notification in the Government Gazette, direct that every person employing workmen or that any specified class of such persons shall send at such time and in such form and to such authority, as may be specified in the notification a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the Government may direct.

**18.** Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

**19.** Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory a valid certificate granted in respect of such person under section 10 or section 44 of the Jammu and Kashmir Factories Act, 1999 before the occurrence of the injury shall be conclusive proof of the age of such person.

**20.** (1) Whoever—  
 (a) fails to maintain a notice book which he is required to maintain under sub-section (3) of section 10, or  
 (b) fails to send to the commissioner a statement which he is required to send under sub-section (1) of section 11, or  
 (c) fails to send a report which he is required to send under section 12, or  
 (d) fails to make a return which he is required to make under section 17 shall be punished with fine which may extend to one hundred rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a commissioner, and no Court shall take cognisance of any offence under this section unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.



## CHAPTER III.

## COMMISSIONERS.

**21.** (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a commissioner.

(2) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a commissioner or to enforce any liability incurred under this Act.

**22.** (1) The Government may, by notification in the Government Gazette, appoint any person to be a commissioner for workmen's compensation for such local area as may be specified in the notification.

(2) Where more than one commissioner has been appointed for any local area the Government may, by general or special order, regulate the distribution of business between them.

(3) Any commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, chose one or more persons possessing special knowledge of any matter relevant to the matter under enquiry to assist him in holding the enquiry.

(4) Every commissioner shall be deemed to be a public servant within the meaning of the Ranbir Penal Code.

**23.** Where any matter is under this Act to be done by or before a commissioner the same shall, subject to the provisions of this Act, and to any rules made hereunder, be done by or before a commissioner for the local area in which the accident took place which resulted in the injury.

(2) If a commissioner is satisfied that any matter arising out of the proceedings, pending before him can be more conveniently dealt with by any other commissioner, whether in the same province or not, he may, subject to rules made under this Act, order such matter to be transferred to such other commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other



commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings :

Provided that the commissioner shall not, where any party to the proceeding has appeared before him, make any order of transfer relating to the distribution among dependents of a lumpsum without giving such party an opportunity of being heard :

Provided further, that no matter other than a matter relating to the actual payment to a workman or the distribution among dependents of a lump-sum shall be transferred for disposal under this sub-section to a commissioner save with the previous sanction of the Government unless all the parties to the proceedings agree to the transfer.

(3) The commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and if the matter was transferred for report return his report thereon or, if the matter was transferred for disposal continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a commissioner to whom any matter has been transferred for report under sub-section (2), the commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The Government may transfer any matter from any commissioner appointed by them to any other commissioner appointed by them.

**24.** (1) No application for the settlement of any matter by a commissioner other than an application by a dependent or dependents for

Form of application. compensation shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) An application to a commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain in addition to any particulars which may be prescribed, the following particulars namely:—

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims ;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the



employer and if such notice has not been served or has not been served in due time, the reasons for such omission ;

(c) the names and the addresses of the parties ; and

(d) except in the case of an application by dependents for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the commissioner.

**25.** (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the commissioner such sum is insufficient, the commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

Power of commissioner to require further deposits in case of fatal accidents.

(2) If the employer fails to show cause to the satisfaction of the commissioner, the commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

**26.** The commissioner shall have all the powers of a civil Court under the Code of Civil Procedure, 1977 for the purpose of taking evidence on oath which such commissioner is hereby empowered to impose and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the commissioner shall be deemed to be a civil Court for all the purposes of section 195 and chapter XXXV of the Code of Criminal Procedure, 1989.

Powers and procedure of commissioner.

**27.** Any appearance, application or act required to be made or done by any person before or to a commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company, or with the permission of the commissioner by any other persons so authorised.

Appearance of parties.

**28.** The commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed

Mode of recording evidence



by the commissioner with his own hand and shall form part of the record:

Provided that, if the commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record: Provided further, that the evidence of any medical witness shall be taken down as nearly as may be word for word.

**29.** All costs incidental to any proceedings before a commissioner shall, subject to rules made under this Act, be in the discretion of the commissioner.

**30.** A commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so shall decide the question in conformity with such decision.

**31.** (1) Where the amount of any lump-sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability a memorandum thereof shall be sent by the employer to the commissioner, who shall on being satisfied as to its genuineness record the memorandum in a register in the prescribed manner:

Provided that—

(a) no such memorandum shall be recorded before seven days after communication by the commissioner of notice to the parties concerned;

(b) the commissioner may at any time rectify the register;

(c) where it appears to the commissioner that an agreement as to the payment of a lump-sum whether by way of redemption of a half-monthly payment or otherwise or an agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything



contained in the Jammu and Kashmir Contract Act, 1977 or in any other law for the time being in force.

**32.** Where a memorandum of any agreement, the <sup>Effect of failure to register agreement.</sup> registration of which is required by section 31 is not sent to the commissioner as required by that section the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

**33.** (1) An appeal shall lie to the High Court from the following orders of a commissioner, <sup>Appeal</sup> namely :—

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum ;

(b) an order refusing to allow redemption of a half-monthly payment ;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman or disallowing any claim of a person alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 14, or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided further, that no appeal shall lie in any case in which the parties have agreed to abide by that decision of the commissioner, or in which the order of the commissioner gives effect to an agreement come to by the parties. Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.



(2) The period of limitation for an appeal under this section shall be ninety days.

(3) The provisions of section 5 of the Jammu and Kashmir Limitation Act, 1995 shall be applicable to appeals under this section.

**34.** Where an employer makes an appeal under clause (a) of sub-section (I) of section 33 the commissioner may and if so directed by the High Court shall pending the decision of the appeal withhold payment of any sum in deposit with him.

**35.** Any amount payable by any person under this Act whether under an agreement for the payment of compensation or otherwise may be recovered as an arrear of land revenue.

Withholding of certain payment pending decision of appeal.

## CHAPTER IV.

### RULES.

**36.** (1) The Government may make rules to carry out the purposes of this Act.

Powers of the Government to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:—

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;

(b) for prescribing the intervals which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (I) of section 13;

(c) for prescribing the procedure to be followed by commissioners in the disposal of cases under this Act and by the parties in such cases;

(d) for regulating the transfer of matters and cases from one commissioner to another and the transfer of money in such cases;

(e) for prescribing the manner in which money in the hands of a commissioner may be invested for the benefit of dependents of a deceased workman and for the transfer of money so invested from one commissioner to another;



(f) for the representation in proceedings before commissioners of parties who are minors or are unable to make an appearance ;

(g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered ;

(h) for withholding by commissioners whether in whole or in part of half-monthly payments pending decision on applications for review of the same ;

(i) for regulating the scales of costs which may be allowed in proceedings under this Act ;

(j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a commissioner under this Act ;

(k) for the maintenance by commissioners of registers and records of proceedings before them ;

(l) for prescribing the classes of employers who shall maintain notice books under sub-section 3 of section 10 and the form of such notice books ;

(m) for prescribing the form of statement to be submitted by employers under section 11 ; and

(n) for prescribing the cases in which the report referred to in section 12 may be sent to an authority other than the commissioner.

**37.** (1) The power to make rules conferred by section 36 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with section 23 of the Jammu and Kashmir General Clauses Act, 1977, as that after which a draft of rules proposed to be made under section 36 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Government Gazette and on such publication shall have effect as if enacted in this Act.

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**Workmen's Compensation.****SCHEDULE I.**

[See sections 2 (1) and (4)]

*List of injuries deemed to result in permanent partial disablement.*

Injury.	Percent- age of loss of earning capacity.
Loss of right arm above or at the elbow	70
Loss of left arm above or at the elbow	...
Loss of right arm below the elbow	60
Loss of leg at or above the knee	60
Loss of left arm below the elbow	60
Loss of leg below the knee	50
Permanent total loss of hearing	50
Loss of one eye	50
Loss of thumb	30
Loss of all toes of one foot	25
Loss of one phalanx of thumb	20
Loss of index finger	10
Loss of great toe	10
Loss of any finger other than index finger	10
	5

NOTE.—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

**SCHEDULE II.**

[See section 2 (1) (l)]

*List of persons who, subject to the provisions of section 2 (1) (l), are included in the definition of workmen.*

The following persons are workmen within the meaning of section 2 (1) (l) and subject to the provisions of that section, that is to say, any person who is—

1. (i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity, or



(ii) employed otherwise than in a clerical capacity in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been employed in any manufacturing process, as defined in clause (g) of section 2 of the Jammu and Kashmir Factories Act, 1999, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months, fifty, or more persons have been so employed; or

(iv) employed in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been so employed; or

(v) employed in any mine, in any mining operation, or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground;

Provided that any excavation in which on no day of the preceding twelve months more than fifty persons have been employed or explosives have been used and whose depth from its highest to its lowest point does not exceed twenty feet shall be deemed not to be a mine for the purpose of this clause; or

(vi) employed in the construction, repair or demolition of—

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twenty feet or more from the ground level to the apex of the roof; or

(b) any dam or embankment which is twenty feet or more in height from lowest to its highest point; or

(c) any road, bridge, or tunnel; or

(vii) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard for the same; or

(viii) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal pipe-line, or sewer; or



(ix) employed in the service of any fire brigade ; or

(x) employed upon a railway either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration ; or

(xi) employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas ; or

(xii) employed in any occupation involving blasting operations ; or

(xiii) employed, in the making of any excavation in which on any one day of the preceding twelve months more than fifty persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet ; or

(xiv) employed in the operation of any ferry boat capable of carrying more than ten persons ; or

(xv) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed ; or

(xvi) employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical energy or in the generating or supplying of gas ; or

(xvii) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures ; or

(xviii) employed in the training or keeping of wild animals ; or

(xix) employed in lopping, felling or logging of trees, or the transport of timber by inland waters or the control or extinguishing of forest fires ; or

(xx) employed in operations for the catching or hunting of wild animals ; or

(xxi) employed in the handling or transport of goods in, or within the precincts of—

(a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed ; or

(b) any market in which on any one day of the preceding twelve months one hundred or more persons have been so employed ;

(xxii) employed on the collection of fruits from trees exceeding twenty-five feet in height.



EXPLANATION.—In this Schedule, “the preceding twelve months” relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.

### SCHEDULE III.

(See section 3)

#### *List of occupational diseases.*

##### PART A.

Anthrax	Any employment—
	(a) involving the handling of wool, hair, bristles, or animal carcasses, or the parts of such carcasses including hides, hoofs, and horns ; or
	(b) in connection with animals infected with Anthrax ; or
	(c) involving the loading, unloading or transport of any merchandise.
Compressed air illness or its sequele.	Any process carried on in compressed air.
Poisoning by lead tetra-ethyl	... Any process involving the use of lead tetra-ethyl.
Poisoning by nitrous fumes	... Any process involving exposure to nitrous fumes.

##### PART B.

Lead poisoning or its sequele, excluding poisoning by lead tetra-ethyl.	Any process involving the use of lead or any of its preparations or compounds except lead tetra-ethyl.
Phosphorous poisoning or its sequele.	Any process involving the use of phosphorous or its preparations or compounds.
Mercury poisoning or its sequele.	Any process involving the use of mercury or its preparations or compound.
Poisoning by benzene and its homologues, or the sequele of such poisoning.	Handling benzene or any of its homologues and any process in the manufacture or involving the use of benzene or any of its homologues.
Chrome ulceration or its sequele	... Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium, or their preparations.



Arsenical poisoning or its sequelae ...	Any process involving the production, liberation or utilisation of arsenic or its compounds.
Pathological manifestations due to— (a) radium and other radioactive substances, (b) X-rays.	Any process involving exposure to the action of radium, radio active substances or X-rays.
Primary epitheliomatous cancer of the skin.	Any process involving the handling or use of tar, pitch, bitumen mineral oil, paraffin, or the compounds, productse or residues of these substances.



# Workmens' Compensation.

## SCHEDULE IV.

(See section 4)

### Compensation payable in certain cases.

#### Amount of compensation for

Monthly wages of the workman injured.		Death of total disable- ment of adult.	Permanent for temporary disablement of adult.	Half-monthly payment as compensation	
I		2	3	4	
Rs.	Rs.	Rs.	Rs.	Rs. as. Half his month- ly wages.	
5	10	250	350		
10	15	275	385	5	0
15	18	300	420	6	0
18	21	315	441	7	0
21	24	360	504	8	0
24	27	405	567	8	8
27	30	450	630	9	0
30	35	525	735	9	8
35	40	600	840	10	0
40	45	675	945	11	4
45	50	750	1,050	12	8
50	60	900	1,260	15	0
60	70	1,050	2,470	17	8
70	80	1,200	1,680	20	0
80	100	1,500	2,100	25	0
100	200	1,750	2,450	30	0
200	.....	2,000	2,800	30	0



# THE JAMMU AND KASHMIR LAND PRESERVATION ACT, 2000.

Act No. VIII of 2000.

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13. Inquiries into claims and award thereupon.

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18. Penalty for offences.

19. Bar of suits.

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# THE JAMMU AND KASHMIR LAND PRESERVATION ACT, 2000.

## Act No. VIII of 2000.

[Received assent of His Highness the Maharaja Bahadur on 2nd June 1943/20th Jeth 2000 and published in the Government Gazette dated 1st Bhadon 2000/17th August 1943.]

### An Act to provide for the better preservation and protection of certain portions of the territories of the Jammu and Kashmir State.

WHEREAS it is expedient to provide for the better preservation and protection of certain portions of the territories of the Jammu and Kashmir State situate within or adjacent to the mountain ranges or affected or liable to be affected by the debodisement of forests within those ranges, or by the action of streams and torrents, such as are commonly called *Khuds* and *Nallahs* flowing through or from them ;

Preamble.

It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir Land Preservation Act, 2000.

Short title and extent.

(2) It shall extend to the whole of the State.

2. In this Act, unless a different intention appears from the subject or context,—

Definitions.

(a) "Collector" includes any revenue officer, not lower in rank than an Assistant Collector of the first class specially appointed by the Government to perform the functions of a Collector under this Act ;

(b) "*Khud*" or "*Nallah*" means a stream or torrent flowing through or from mountain range ;

(c) "land" means land within any local area preserved and protected or otherwise dealt with in manner provided in this Act, and includes benefits to arise out of land and things attached to the earth or permanently fastened to any thing attached to the earth ;

(d) "person interested" includes all persons claiming any interest in compensation to be made on account of any measures taken under this Act ; and

(e) the words "tree", "timber", "forest produce" and "cattle" respectively, shall have the meanings severally assigned to them in the Jammu and Kashmir Forest Act, 1987.



## NOTIFICATION AND REGULATION OF AREAS.

3. Whenever it appears to the Government that it is desirable to provide for the better preservation and protection of any local area, situate within or adjacent to any mountain range or affected or liable to be affected by the debodisement of forests in that range or by the action of *Khuds* and *Nallahs* they may, by notification in the Government Gazette, make a direction accordingly.

4. In respect of areas notified under section 3 generally or the whole or any part of any such area, the Government may by general or special order, temporarily regulate, restrict or prohibit—

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of stone, or the burning of lime or the making of bricks at places, where such stone or lime or bricks had not ordinarily been so quarried or burnt or made prior to the publication of notification under section 3 ;

(c) the cutting of trees or timber, or the collection, removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce other than grass save for *bonafide* domestic or agricultural purposes ;

(d) the setting on fire of trees, timber or forest produce ;

(e) the admission, herding,, pasturing or retention of sheep and goats ;

(f) the examination of forest produce passing out of any such area ; and

(g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area to take any trees, timber or forest produce for their own use therefrom, or to pasture sheep or goats or to cultivate or erect buildings therein and the production and return of such permits by such persons.

5. In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3, the Government may by special order temporarily regulate, restrict or prohibit—

Power in certain case to regulate, restrict or prohibit, by special order within notified areas, certain further matters.



(a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of stone or the burning of lime or the making of bricks at places where such stone or lime or bricks had ordinarily been so quarried or burnt or made prior to the publication of the notification under section 3 ;

(c) the cutting of trees or timber, or the collection, removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce for any purposes ; and

(d) the admission, herding, pasturing or retention of cattle generally, other than sheep and goats, or of any class or description of such cattle.

EXPLANATION.—For the purposes of clause (b) of section 4 and clause (b) of this section, the word “making” includes “burning”.

6. Every order under section 4 or 5 shall be published in the Government Gazette and shall set forth that the Government are satisfied, after due inquiry and consideration, of objections as may have been preferred that the regulations, restrictions or prohibitions contained in the order are necessary for the purpose of giving effect to the provisions of this Act.

7. (I) When in respect of any local area a notification has been published under section 3 ; and

*Necessity for regulation, restriction or prohibition to be recited in the order under section 4 or 5*  
*Publication of order.*  
*Proclamation of regulations, restrictions and prohibitions and admission of claims of compensation for rights which are restricted or extinguished.*

(a) upon such publication any general order made under section 4 becomes applicable to such area ; or

(b) any special order under section 4 or section 5, is made in respect of such area, the Collector shall cause public notice of the provisions of such general or special order to be given and, if the provisions of any such order restrict or prohibit the exercise of any existing rights, shall also publish in every town and village the boundaries of which include any portion of the area within or over which the exercise of any such rights is so restricted or prohibited a proclamation stating the regulations, restrictions and prohibitions which have been imposed, by any such order, within the limits of such area or in any part or parts thereof fixing a period of not less



than three months from the date of such proclamation and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount and particulars of the compensation, if any, claimed in respect thereof.

(2) Any claim not preferred within the time fixed in the proclamation made under sub-section (1) shall be rejected :

Provided that if the claimant satisfies the Collector that he had sufficient cause for not preferring the claim within time, the Collector may admit any such claim as if it had been made within such period.

### CONTROL OVER THE BEDS OF KHUDS AND NALLAHS.

8. (1) Whenever after due enquiry and consideration of such objections as may be preferred it appears to the Government that it is desirable that measures should be taken in the bed of any *Khud* or *Nallah* for the purpose of—

Action when Government considers it desirable to take measures to regulate the beds of Khuds and Nallahs. Vesting of such beds in the Government.

(a) regulating the flow of water within and preventing the widening or extension of such bed, or of

(b) reclaiming or protecting any land situate within the limits of such bed, they may either proceed at once in the manner provided in sub-section (2), or they may, in the first instance, issue a notification specifying the nature and extent of the measures which in their opinion are necessary, and the locality in, and the time within, which such measures are to be taken, requiring all owners and occupiers of land situate in such locality to carry out the measures specified in such notification.

(2) If the whole or any part of the bed of any *Khud* or *Nallah* be unclaimed, or, if in the opinion of the Government the measures deemed necessary under sub-section (1) are of such a character in regard to extent and cost that the interference of the Government is absolutely necessary, or in the event of the owner or occupier of any portion of the bed of any *Khud* or *Nallah* failing to comply with the requirements of any notification issued under sub-section (1), the Government may by notification declare that the whole or any part of the area comprised within



the limits of the bed of any *Khud* or *Nallah* shall vest in the Government for such period and subject to such conditions, if any, as may be specified in the notification, and may, from time to time, by like notification extend the period during which any such area shall remain vested in the Government :

Provided that no such declaration shall be made in respect of or shall affect any land included within the limits of the bed of any such *Khud* or *Nallah* which, at the date of the notification making such declaration, is cultivated and yields any produce of substantial value.

(3) When the owners or occupiers of such locality are unable to agree among themselves regarding the carrying out of such measures the decision of those paying the larger amount of land revenue shall be held to be binding on all.

9. Upon the making of any declaration under sub-section (2) of section 8 all private rights of whatever kind existing in or relating to any land comprised within the area specified in the notification containing such declaration at the time of the publication therefor shall be suspended for the period specified in the declaration and for such further period, if any, to which the notification may be extended :

Provided that, as far as circumstances admit, such rights of way and water shall be reserved in respect of every such area, as may be necessary to meet the reasonable requirements and convenience of the persons, if any, who, at the time of the making of such declaration, possessed any such rights over such area.

10. (1) The Collector shall, for the purpose of every notification issued under sub-section (2) of section 8, fix the limits of the area comprised within the bed of the *Khud* or *Nallah* to which such notification is to apply.

Power of the Collector to delimit the bed and to decide what constitutes such bed. Power to take possession of bed when vested in the Government.

(2) Upon the publication of the notification containing any declaration under sub-section (2) of section 8, it shall be lawful for the Collector to—

(a) take possession of the area specified in such declaration ;

(b) eject all persons therefrom ; and

(c) deal with such area while it remains vested in the Government as if it were the absolute property of Government.



## BAR OF COMPENSATION FOR ACTS DONE UNDER SECTIONS 8, 9 AND 10.

**11.** No person shall be entitled to any compensation for anything at any time done in good faith in exercise of any power conferred by section 8, section 9 or section 10.

## POWER TO ENTER UPON AND DELIMIT NOTIFIED AREA AND BEDS.

**12.** It shall be lawful for the Collector and his subordinate officers, servants, caretakers and workmen from time to time, as occasion may require—

Power to enter upon, survey and demarcate local areas notified under section 3 or 8.

(a) to enter upon and survey any land comprised within any local area in regard to which any notification has been issued under section 3 or section 8 ;

(b) to erect bench-marks on and to delimit and demarcate the boundaries of any such local area ; and

(c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to carry into effect all or any of the provisions of this Act :

Provided that reasonable compensation to be assessed and determined in the manner provided in this Act shall be made in respect of any damage or injury caused to the property or rights of any person in carrying out any operations under the provisions of this section, shall be payable in respect of any thing done.

## INQUIRY INTO CLAIMS AND AWARD OF COMPENSATION.

**13.** (1) The Collector shall—

Inquiries into claims and award thereupon.

(a) fix a date for inquiry into all claims made under sections 7 and 8 and may, in his discretion, from time to time, adjourn the inquiry to a date to be fixed by him ;

(b) record in writing all statements ;

(c) inquire into all claims duly preferred ;

(d) make an award upon each such claim, setting out therein the nature and extent of the right claimed, the person or the persons making such claim, the extent, if any, to which, and the persons or person in whose favour, the right claimed is established, the extent to which it is



restricted or prohibited and the nature and amount of compensation if any awarded.

(2) For the purposes of every such enquiry the Collector may exercise all or any of the powers of a Civil Court in the trial of suits under the Code of Civil Procedure, 1977.

(3) The Collector shall announce his award to such persons interested or their representatives as are present and shall record the acceptance of those who accept it. To such as are not present the Collector shall cause immediate notice of his award to be given.

**14.** (1) In determining the amount of compensation and the taking over of possession the Collector shall be guided, so far as may be, by the provisions of sections 23, 24, 16 and 17 of the Jammu and Kashmir Land Acquisition Act, 1990 and as to matters which cannot be dealt with under those provisions by what is just and reasonable in the circumstances of each case.

(2) The Collector may with the sanction of the Government and the consent of the person entitled, instead of money, award compensation in land or by reduction in revenue or in any other form.

(3) In any case in which the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such right is so prohibited.

#### PROCEDURE, RECORDS AND APPEALS.

**15.** (1) For every area, notified under section 3, or section 8, the Collector shall prepare a record setting forth the nature, description, and extent of all rights mentioned in section 4 and section 5—

(a) existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8 ;

(b) regulated, restricted or prohibited by any order under section 4 or section 5.

(2) When any award is made under section 14, its effect upon such rights shall also be recorded therein.

**16.** (1) Upon the publication of a notification issued under any of the provisions of this Act, the Collector shall cause a public notice or the substance thereof to be given at convenient places to which such notification relates.



(2) The procedure prescribed in section 15-B, 15-C and 15-D of the Land Revenue Act, 1996, shall be followed, as far as may be, in proceedings under this Act.

**17.** Every order passed and every award made by the Collector under this Act, shall for the purposes of appeal, review and revision, respectively be deemed to be an order of the Collector within the meaning of section 11, 12, 13 and 14 of the Jammu and Kashmir Land Revenue Act, 1996:

Provided that nothing in this Act shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded, as to the apportionment of distribution thereof amongst such persons or any of them.

**18.** Any person who within the limits of any local area notified under section 3 commits any breach of any regulation made or restrictions or prohibitions imposed under section 4 or section 5 shall be punished with fine which may extend to one hundred rupees or in default with imprisonment for a period not exceeding one month.

**19.** No suit shall lie against the Government for anything done under this Act and no suit shall lie against any public servant for any thing done or purporting to have been done by him, in good faith, or against any private individual for any thing done or purporting to have been done by him in good faith under the orders of any such public servant, under this Act.

**20.** (1) The Government may make rules consistent with this Act—

(a) regulating the procedure to be observed in any inquiry or proceeding under this Act; and

(b) generally for the purpose of carrying into effect all or any of the provisions of this Act.

(2) All rules made under this section shall be published in the Government Gazette and on the expiry of thirty days from the date of such publication shall have the force of law.



# THE LADAKH BUDHISTS SUCCESSION TO PROPERTY ACT, 2000.

Act No. XVIII of 2000.

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SECTION.

1. Short title and extent.

3. Right of all sons to succeed in equal shares.

2. Definitions.

4. Saving.

# THE LADAKH BUDHISTS SUCCESSION TO PROPERTY ACT, 2000.

Act No. XVIII of 2000.

[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000/and published in the Government Gazette dated 14th Magh 2000/27th January 1944.]

## An Act to define and amend in certain respects the law relating to succession to property of the Budhists of Ladakh.

Whereas it is expedient to define and amend in certain respects the law relating to succession to property of the Budhists of Ladakh; It is

Preamble.

hereby enacted as follows :—

1. (i) This Act may be called the Ladakh Budhists Succession to Property Act, 2000.

Short title and extent,

(ii) It shall extend to the whole of Jammu and Kashmir State, but shall apply to the Budhists who have their domicile in Ladakh.

2. In this Act, unless there is anything repugnant in the subject or context :—

Definitions.

(a) "Budhist" means a person who professes the Buddhist faith or religion ;

(b) "Ladakh" means the District of Ladakh.



3. On the death of a Buddhist his property where he leaves more than one son, shall, notwithstanding any law or custom to the contrary but subject to any valid disposition thereof which he may have made during his lifetime, be inherited by all his sons in equal shares.

Right of all sons to succeed in equal shares. Provided that sons, sons of pre-deceased sons, and sons of pre-deceased sons of pre-deceased sons, shall inherit *per stripes*, that is to say, the sons of a pre-deceased son shall take the share which would have been taken by him, and likewise the grandsons of a pre-deceased son shall take the share which their father would have taken.

4. The provisions of this Act shall not affect any right of succession accrued or any title to property acquired before the commencement of this Act.

Saving.

## THE TRADE MARKS ACT, 2000.

Act No. XIX of 2000.

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## THE TRADE MARKS ACT, 2000.

### Act No. XIX of 2000.

*[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000 and published in the Government Gazette dated 21st Magh 2000/3rd February 1944.]*

### An Act to provide for the Registration and more effective protection of Trade Marks.

#### CHAPTER I.

#### PRELIMINARY.

WHEREAS it is expedient to provide for the registration and more effective protection of trade marks ; It is hereby enacted as follows :—

Preamble.

1. (1) This Act may be called the Trade Marks Act,

Short title, extent and commencement 2000.

(2) It extends to the whole of Jammu and Kashmir State.

(3) This section and section 85 shall come into force at once ; the remaining provisions of the Act shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.



2. (1) In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) “associated trade marks” means trade marks deemed to be, or required to be registered as, associated trade marks under this Act ;

(b) “certification trade mark” means a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified and registrable as such under the provisions of Chapter VIII in respect of those goods in the name, as proprietor of the certification trade mark, of that person ;

(c) “District Court” has the meaning assigned to it in the Code of Civil Procedure, 1977 ;

(d) “High Court” means the High Court, as defined in section 48 of the Jammu and Kashmir Constitution Act, 1996 ;

(e) “limitations” (with its grammatical variations) means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded in within the State, or as to use in relation to goods to be exported to any market outside the State ;

(f) “mark” includes a device, brand, heading, label, ticket, name, signature, work, letter or numeral or any combination thereof ;

(g) “permitted use” means the use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject ;

(h) “prescribed” means prescribed by rules made, in relation to proceedings before the High Court, by the High Court, and in other cases, by the Government ;

(i) “registered” (with its grammatical variations) means registered under this Act ;

(j) “registered trade mark” means a trade mark which is actually on the register ;

(k) “registered user” means a person who is for the time being registered as such under section 41 ;

(l) “trade mark” means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to



indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person ;

(m) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfers, not being assignment ;

(n) "tribunal" means the Registrar or, as the case may be, the Court before which the proceeding concerned is pending.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references herein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in any other relation, whatsoever, to such goods.

3. The provisions of this Act shall be in addition to Application of other and not in derogation of, the provisions of laws not barred. any other law for the time being in force.

## CHAPTER II.

### THE REGISTRAR AND CONDITIONS FOR REGISTRATION.

4. For the purposes of this Act there shall be established The Register of trade marks. at the Patent Office a Trade Mark Registry, and a record called the Register of Trade Marks (in this Act referred to as the register) shall be kept thereat wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed, but there shall not be entered in the register any notice of any trust express, implied or constructive nor shall any such notice be receivable by the Registrar.

(2) Subject to the superintendence and direction of the Government, the register shall be kept under the control and management of the Controller of Patents and Designs, who shall for the purposes of this Act be called the Registrar of Trade Marks (and is in this Act referred to as the Registrar).

(3) The register shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.



**5.** (1) A trade mark may be registered only in respect of particular goods or classes of goods.  
Registration to be in respect of particular goods.

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision in the matter shall be final.

**6.** (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely:—  
Distinctiveness requisite for registration.

(a) the name of a company, individual, or firm, represented in a special or particular manner;

(b) the signature of the applicant for registration or some predecessor in his business;

(c) one or more invented words;

(d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India;

(e) any other distinctive mark, provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.

(2) For the purposes of this section, the expression "distinctive" means adapted, in relation to the goods in respect of which a trade mark is proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from, goods in the case of which no such connection subsists, either generally or where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

(a) the trade mark is inherently so adapted to distinguish, and

(b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted to distinguish:

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to which registration is applied for, during a period from a date



prior to the 1st Baisakh 1996, to the date of application for registration, the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.

**7.** (1) A trade mark may be limited wholly or in part to one or more specified colours, and any such limitation shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

(2) So far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

**8.** No trade mark nor part of a trade mark shall be registered which consists of, or contains, any scandalous design, or any matter the use of which would—

(a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a court of justice ;

(b) be likely to hurt the religious susceptibilities of any class of His Highness' subjects ; or

(c) be contrary to any law for the time being in force or to morality.

**9.** No word which is commonly used and accepted name of any single chemical element or single chemical compound (as distinguished from a mixture) shall be registered as a trade mark in respect of a chemical substance or preparation, any such registration shall, notwithstanding anything in section 24, be deemed for the purposes of section 46 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require :

Provided that this section shall not apply to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

**10.** (1) Save as provided in sub-section (2), no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or which so



nearly resembles such trade mark as to be likely to deceive or cause confusion.

(2) In case of honest concurrent use or of other special circumstances which, in the opinion of Registrar, make it proper so to do he may permit the registration by more than one proprietor of trade marks which are identical or nearly resemble each other in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by a competent Court.

**11.** (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.

Registration of parts of trade marks and of trade marks as a series.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and have all the incidents of an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statements of the goods in relation to which they are respectively used or proposed to be used ; or

(b) statements of number, price, quality or names of places ; or

(c) other matters of a non-distinctive character which does not substantially affect the identity of the trade mark ; or

(d) colour ;

seeks to register those trade marks, they may be registered as a series in one registration.

**12.** (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

Associated marks.

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(2) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 11, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be and shall be registered as, associated trade marks.



(3) All trade marks registered in accordance with the provisions of sub-section (3) of section II as a series in one registration shall be deemed to be and shall be registered as associated trade marks.

(4) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

Registration subject to disclaimer.

**13.** If a trade mark contains—

(a) any part not separately registered as a trade mark in the name of the proprietor, or of the separate registration of which no application has been made, or

(b) any matter common to the trade, or otherwise of a non-distinctive character,

the tribunal, in deciding whether the trade mark shall be entered or shall remain on the register, may require as condition of its being on the register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled or make such other disclaimer as the tribunal may consider necessary for the purpose of defining the rights of the proprietor under the registration :

Provided that no disclaimer shall affect any right of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

### CHAPTER III.

#### PROCEDURE FOR, AND DURATION OF, REGISTRATION.

**14.** (I) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it shall apply in writing to the Registrar in the prescribed manner, and subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

Application for registration.



(2) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat.

(3) The tribunal may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as it may think fit.

**15.** (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised, in the prescribed manner:

Provided that the Registrar may cause an application to be advertised before acceptance if it relates to a trade mark to which clause (e) of sub-section (1) of section 6 applies, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(3) The Registrar shall serve in the prescribed manner a copy of the notice on the applicant, and within the prescribed time the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement the Registrar shall serve in the prescribed manner a copy thereof on the person giving notice of opposition and shall, after hearing the parties, if so required, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice, or an appellant against any order of the Registrar under section 14 or this section, neither resides nor carries on business in the State, the tribunal may require him to give security for costs of the proceedings before it, and in



default of such security being duly given may treat the opposition or application or appeal, as the case may be, as abandoned.

**16.** (1) When an application for registration of a trade mark has been accepted and either has not been opposed and the time for notice of opposition has expired, or having been opposed, has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error, or unless the Government otherwise directs, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the making of the said application, and that date shall, subject to any direction made under section 83 applicable to such trade mark, be deemed for the purposes of this Act to be the date of registration.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

**17.** (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

(a) on behalf of both or all of them, or

(b) in relation to an article with which both or all of them are connected in the course of trade, those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

**18.** (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section.



(2) The Registrar, shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fifteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as "the expiration of the last registration").

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

**19.** Where a trade mark has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year next after the date of removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

(a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

## CHAPTER IV.

### EFFECT OF REGISTRATION.

**20.** (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for the infringement of an unregistered trade mark unless such trade mark has been continuously in use since before the 1st Baisakh 1996, by such person or by a predecessor in title of his and unless an application for its registration made within five years from the commencement of this Act, has been refused; and the Registrar shall, on application in the prescribed manner, grant a certificate that such application has been refused.

No action for infringement of unregistered trade marks.



3-22)

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

**21.** Subject to the provisions of sections 22, 25 and 26 <sup>Right conferred by registration.</sup> the registration of a person in the register as proprietor of a trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods and without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being used as a trade mark ; or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

**22.** (1) The right to the use of a trade mark given under <sup>No infringement in certain circumstances.</sup> section 21 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark ; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the



use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(3) The use of a registered trade mark, being one of two or more registered trade marks which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

**23.** In all legal proceedings relating to a registered trade mark, the fact that a person is registered as proprietor thereof shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

**24.** In all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 8.

**25.** Nothing in this Act shall entitle the proprietor of a registered user of a registered trade mark to interfere with or restrain the use by person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his, or

(b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his, whichever is the earlier or to object (on such use being proved) to registration of that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section 10.

**26.** No registration of a trade mark shall interfere with any *bona fide* use by a person of his own name, address or description of goods, or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, not being a description that would be



likely to be taken as importing any such reference as is mentioned in clause (b) of section 21 or in clause (b) of section 57.

**27.** (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any words which the trade mark contains or of which it consists as the name or description of an article or substance :

Words used as name or description of an article or substance.

Provided that, if it is proved either—

(a) that there is a well-known and established use of the said words as the name or description of the article or substance by a person carrying on a trade therein, not being used in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor ;  
or

(b) that the article or substance has been manufactured under a patent in force at or granted after the commencement of this section, that a period of two years or more after the cessor of the patent has elapsed, and that the said words are the only practicable name or description of the article or substance :—

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then

(a) for the purposes of any proceedings under section 46—

(i) if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed to be an entry wrongly remaining on the register ;

(ii) if the trade mark contains such words and other matter, the tribunal, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in the relation to that article or substance and any goods of the same description, of such words, provided that no disclaimer shall affect any rights of the proprietor of a trade mark



except such as arise out of the registration of the trade mark in respect of which the disclaimer is made ;

(b) for the purpose of any other legal proceedings relating to the trade mark—

(i) if the trade mark consists solely of such words all rights of the proprietor under this Act or any other law to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or

(ii) if the trade mark contains such words, in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in clause (a) of the proviso to sub-section (i) first became well known and established, or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

## CHAPTER V.

### ASSIGNMENT AND TRANSMISSION.

**28.** The person for the time being entered in the register

Power of registered proprietor to assign and give receipts.

as proprietor of a trade mark, shall subject to the provisions of this Act and to any rights appearing from the register to

be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

**29.** Notwithstanding anything in any other law to the

Assignability of registered trade marks.

contrary, a registered trade mark shall subject to the provisions of this Chapter,

be assignable and transmissible whether in connection with the goodwill of a business or not, and in respect either of all of the goods in respect of which it is registered or of some only of those goods.

**30.** An unregistered trade mark shall be assignable and

Assignability of unregistered trade marks.

transmissible whether in connection with the goodwill of a business or not :

Provided that except in connection with the goodwill of a business assignment or transmission shall be permissible only, if—

(a) at the time of assignment or transmission of the



unregistered trade mark it is used in the same business as a registered trade mark, and

(b) the registered trade mark is assigned or transmitted at the same time and to the same person as the unregistered trade mark, and

(c) the unregistered trade mark relates to goods in respect of which the registered trade mark is assigned or transmitted.

**31.** (1) Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion:

Restrictions on assignment or transmission where multiple exclusive rights would be created.

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise trade in, within the State (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside the State.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or mis-representation be conclusive as to the validity or invalidity under sub section (1) of the assignment in so far as such, validity or invalidity depends, upon the facts set out in the case, but as regards, a certificate in favour of validity, only if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.



**32.** Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in any place in the State and an exclusive right in another of these persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in any other place in the State:

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claim that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 31 if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

**33.** Where an assignment in respect of any goods of a trade mark which is at the time of the assignment used in a business in those goods, is made after the commencement of this Act otherwise than in connection with the goodwill of that business, the assignment shall not take effect unless the assignee, not later than the expiration of six months, from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.



**34.** (1) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Government, for which application shall be made in writing in the prescribed manner through the Registrar.

Conditions for assignment and transmission of certification trade marks and associated trade marks.

(2) Associated trade marks shall be assignable and transmissible only as a whole and not separately.

**35.** (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

Registration of assignments and transmission.

(2) Except for the purposes of an appeal against a decision of the Registrar under sub-section (1) or of an application under section 46, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1) shall not be admitted in evidence before any tribunal in proof of the title to a trade mark unless the tribunal otherwise directs.

## CHAPTER VI.

### USE OF TRADE MARKS AND REGISTERED USERS.

**36.** (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark, if the Registrar is satisfied that a company is about to be formed and registered under the Jammu and Kashmir Companies Act, 1997, and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods by the company.

Proposed use of trade mark by company to be formed.

(2) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods is registered in the name



of an applicant who relies on intention to assign to a company, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

**37.** (1) Subject to the provisions of section 38, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application in the prescribed manner by any

Removal from register and imposition of limitations on ground of non-use.

person aggrieved to the High Court or to the Registrar, on the ground either—

(a) that the trade mark was registered without any *bona-fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 36 apply, by the company concerned, and that there has in fact been no *bona-fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application; or

(b) that upto a date one month before the date of the application, a continuous period of five years or longer elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being:

Provided that, except where the applicant has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application made under clause (a) or clause (b) in relation to any goods, if it is shown that there has been before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold or otherwise traded



in, in particular place in the State (otherwise than for export from the State) or in relation to goods to be exported to a particular market outside the State, and

(b) a person has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be so sold, or otherwise traded in ; or in relation to goods to be so exported, the tribunal is of opinion that he might properly be permitted so to register such a trade mark, on application by that person in the prescribed manner to the High Court or to the Registrar, that tribunal may impose on the registration of the first mentioned trade mark such limitations as it thinks proper for securing that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates.

**38.** (1) Where a trade mark consisting of any invented word has become so well-known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first mentioned goods then, notwithstanding that the proprietor registered in respect of the first mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 37 the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under the said section.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

Defensive registration  
of a well-known trade  
marks



(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar the registration of a trade mark as a defensive trademark may be cancelled on the ground that the requirements of sub-section (1) are no longer satisfied in respect of any goods in relation to which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in relation to which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

**39.** (1) A person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark and either with or without conditions or restrictions).

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor for any purpose for which such use is material under this Act or any other law.

**40.** (1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within three months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making a proprietor a defendant.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any



costs unless he enters an appearance and takes part in the proceedings.

**41.** (1) Where it is proposed that a person should be registered as a registered user of a trade mark the proprietor and the proposed registered user shall make application in writing to the Registrar in the prescribed manner accompanied by an affidavit made by the proprietor or by some person authorised to the satisfaction of the Registrar to act on his behalf—

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restrictions as to persons for whose registration as registered users application may be made ;

(b) stating the goods in respect of which registration is proposed ;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods to the mode or place of permitted use, or to any other matter ;

(d) stating whether the permitted use is to be for a period or without limit of period and if for a period the direction thereof and by such further documents, information or evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, if the Registrar is satisfied that in all the circumstances the use of the trade mark in respect of the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar may think proper, would not be contrary to the public interest, the Registrar may register, subject as aforesaid, the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

(3) The Registrar shall refuse an application under this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(4) The Registrar shall, if so requested by an applicant, take steps for securing that information given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rival in trade.

(5) The Registrar shall issue notice in the prescribed manner—



(a) of the registration of a person as a registered user, to any other registered user, of the trade mark ;

(b) of an application under section 42, to the registered proprietor, and each registered user, (not being the applicant) of the trade mark.

**42.** Without prejudice to the provisions of section 46, the registration of a person as a registered user—  
Power to Registrar to vary or cancel registration as registered user.

(a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark ;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark ;

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely :—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use or in such a way as to cause or to be likely to cause, deception or confusion ;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration ;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested ;

(d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

**43.** Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.  
Registered user not to have right of assignment or transmission.

**44.** (I) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept use of a registered associated trade mark,  
Use of one of associated or substantially identical trade marks equivalent to use of another.



or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall, for the purposes of this Act be deemed to be also a use of any trade mark being a part thereof and registered in accordance with sub-section (1) of section 11 in the name of the same proprietor.

Use of trade mark for export trade and use when form of trade connection changes

45. The application in the State of a trade mark to goods to be exported from the State and any other act done in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within the State would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purposes for which such use is material under this Act or any other law.

(2) The use of a registered trade mark in relation to goods between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods between which and the person using the mark or any predecessor in his business different form of connection in the course of trade subsisted or subsists.

## CHAPTER VII.

### RECTIFICATION AND CORRECTION OF THE REGISTER.

46. (1) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention of, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar and the tribunal may make such order for making, expunging or varying the entry as it may think fit.



(3) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(4) The High Court or the Registrar, of its or his own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

**47.** (1) The Registrar may on application made in the prescribed manner by the registered proprietor,—

Correction of register.

(a) correct any error in the name, address or description of the registered proprietor of a trade mark ;

(b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark ;

(c) cancel the entry of a trade mark on the register ;

(d) strike out any goods or classes of goods from those in respect of which a trade mark is registered ;

(e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change in the name, address or description of the registered user.

**48.** (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

Alteration of registered trade mark.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties, if so required, decide the matter.

(3) Where leave is granted under this section, the trade



mark as altered shall be advertised in the prescribed manner unless the application has already been advertised under sub-section (2).

**49.** (1) The Registrar shall not, in exercise of any power conferred on him under clause (a) of sub-section (2) of section 84, make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods :

Provided that this sub-section shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition of antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be notified to the registered proprietor of the trade mark affected and advertised in the prescribed manner and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

## CHAPTER VIII.

### CERTIFICATION TRADE MARKS.

**50.** Subject to the provisions of this Chapter, the other provisions of this Act except sections 6, 21, 22, 31, 32, 33, 36, 37, 39, 40, 41, 42 and 43 and sub-section (2) of section 45 shall apply to certification trade marks as they apply to trade marks.

**51.** A mark shall not be registerable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified.

**52.** In determining whether a mark is adapted to distinguish in accordance with the provisions of clause (b) of sub-section (1) of section 2, the tribunal may have regard to the extent to which—

(a) the mark is inherently so adapted to distinguish in



relation to the goods in question ; and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact so adapted to distinguish in relation to the goods in question.

**53.** (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 56.

(2) The provisions of section 14 shall have effect in relation to an application under this section as they have effect in relation to an application under the said section, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant as if the application were an application under section 14 and to any other considerations (not being matters within the competence of the Government under section 54) relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

**54.** When authorisation to proceed with an application under section 53 has been given, the Registrar shall forward the application to the Government who shall consider the application with regard to the following matters, namely :—

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered ;

(b) whether the draft of the regulations to be deposited under section 56 is satisfactory ;

(c) whether in all the circumstances the registration applied for would be to the public advantage ; and may either—

(i) direct that the application shall not be accepted ; or

(ii) direct the Registrar to accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which it thinks requisite having regard to any of the said matters ; but, except in the case of a direction



for acceptance and approval without modification and unconditionally, the Government shall not decide the matter without giving to the applicant an opportunity of being heard :

Provided that the Government may, at the request of the applicant, made with the concurrence of the Registrar, consider the application with regard to any of the said matters before authorisation to proceed with the application has been given, so, however, that the Government shall be at liberty to reconsider any matter on which it has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft of the regulations.

**55.** (1) When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 15 shall have effect in relation to the registration of the mark as if the application had been an application under section 14 :

Provided that, in deciding under the said provisions the tribunal shall have regard only to the considerations referred to in sub-section (3) of section 53, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Government under sub-section (2) of this section of any opposition relating to any of the matters referred to in section 54, the Government shall, after hearing the parties, if so required, and considering any evidence, decide whether and subject to what conditions or limitations, or amendments or modifications, if any, of the application or of the regulations to be deposited under section 56, registration is, having regard to those matters to be permitted.

**56** (1) There shall be deposited at the Patent Office in respect of every mark registered as a certification trade mark regulations approved by the Government for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the certification trade mark, and may contain any other provisions which the Government may by general or special order require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulation) ; and regulations so

Deposit of regulations governing the use of a certification trade mark.



deposited shall be open to inspection in like manner as the register.

(2) The regulations so deposited may on the application of the registered proprietor be altered by the Registrar with the consent of the Government.

(3) The Government may cause such application to be advertised in any case where it appears to it expedient so to do, and where it does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Government shall not decide the matter without giving the parties an opportunity of being heard.

**57.** Subject to the provisions of sections 25, 26 and 58, Right conferred on registration. the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the certification trade mark in relation to those goods, and, without prejudice to the generality of the foregoing provision that right shall be deemed to be infringed by any person who, not being the proprietor of the mark or a person authorised by him in that behalf under the regulations deposited under section 56, using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either ;

(a) as being use as a certification trade mark, or

(b) to import a reference to some person having the right either as proprietor, or by his authorisation under the said regulations, to use the mark, or to goods certified by the proprietor.

**58.** (1) The right to the use of a certification trade mark No infringement in given under section 57 by registration certain circumstances. shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode in relation to goods to be sold or otherwise traded in any place, in relation to goods to be exported to any market, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a certification trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods certified by the proprietor of the mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation



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under the relevant regulations has applied the mark and has not consequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark, or

(b) in relation to goods adapted to form part of, or to be accessory to other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor :

Provided that clause (a) shall not apply to the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that clause if such application is contrary to the said regulations.

(3) Where a certification trade mark is one of two or more registered certification trade marks which are identical or nearly resemble each other the use of any of those marks in exercise of the right to the use of that mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those marks.

**59.** (1) The Government may, on the application in the prescribed manner of any person aggrieved or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation, make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds, namely :—

(a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the mark is registered to certify those goods ;

(b) that the proprietor has failed to observe any provision of the deposited regulations to be observed on his part ;

(c) that it is no longer to the public advantage that the mark should be registered ;

(d) that it is requisite for the public advantage that, if the mark remains registered, the regulations should be varied ; and neither the High Court nor the Registrar shall have any jurisdiction to make an order under section 46 on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for



giving effect to any order made under sub-section (1).

**60.** The Registrar shall have no power to award costs to  
Cost not to be awarded or against any party on an appeal to him in certain cases.  
 against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the mark.

**61.** Save as otherwise expressly provided in this Chapter,  
Decision of the Government to be final. every decision of the Government under this Chapter shall be final.

## CHAPTER IX.

### SPECIAL PROVISIONS FOR TEXTILE GOODS.

**62.** The Government shall prescribe classes of goods (in  
Textile goods. this Chapter referred to as textile goods)  
 to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

**63.** (1) There shall be kept for the purposes of this Act a  
Textile Marks Record record called the Textile Marks Record wherein shall be entered copies of all entries in the register relating to trade marks registered in respect of textile goods and the said record shall at all convenient times be open to the inspection of the public subject to such conditions and restrictions as may be prescribed.

(2) Trade marks in respect of textile goods of which registration has been refused shall be entered in a list called the Refused Textile Marks List, a copy of which shall be kept at the registered office, and the list and the said copy shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

Restriction on registration of textile goods. **64.** In respect of textile goods being piece-goods—

(a) no mark consisting of a line heading alone shall be registrable as a trade mark;

(b) a line heading shall not be deemed to be adapted to distinguish;

(c) the registration of a trade mark shall not give any exclusive right to the use of a line heading.

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be



subject to such conditions and restrictions as may be prescribed.

**65.** (1). Applications for the registration of a trade mark in respect of textile goods shall be made to the Registrar.

**66.** (1) The Government may in the prescribed manner constitute one or more Advisory Committees of persons versed in the usages of the textile trade for the purpose of this section.

(2) The Registrar shall consult any such Committee with respect to any circumstances peculiar to the textile trade arising on an application to register a trade mark in respect of textile goods.

(3) The place of meeting and the conduct of business of such Committees shall be determined by rules made under this Act.

## CHAPTER X.

### OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

**67.** If any person makes, or cause to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

**68.** (1) From such date, not being earlier than one year from the commencement of this Act, as the Government may, by notification in the Government Gazette appoint in this behalf no person shall make any representation—

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark ; or

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark ; or

(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered ; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances



in which, having regard to limitations entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) For the purposes of this section, the use in State in relation to a trade mark of the word 'registered' or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register except—

(a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside State being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside the State in relation solely to goods to be exported to that country.

**69.** If a person without due authority, uses in connection

Restraint of use of  
Royal Arms and State  
emblems. with any trade, business, calling or profession—

(a) the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or

(b) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with His Highness' Government, he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title of the Registrar, be restrained by injunction from continuing so to use the same.

## CHAPTER XI.

### MISCELLANEOUS.

Procedure before the  
Registrar.

**70.** In all proceedings under this Act before the Registrar—



(a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witness, compelling the discovery and production of documents and issuing commissions for the examination of witness ;

(b) evidence shall be given by affidavit provided that the Registrar may, if he thinks fit take oral evidence in lieu of, or in addition to, such evidence by affidavit ;

(c) the Registrar shall not exercise any power vested in him by this Act or the rules made thereunder adversely to any party duly appearing before him without (if required in writing within the prescribed time so to do) giving such party an opportunity of being heard ;

(d) the Registrar may, save as otherwise expressly provided in this Act, and subject to any rules made in this behalf under section 84, make such orders as to costs as he considers reasonable and any such order shall be executable as a decree of a Civil Court.

**71.** In all proceedings under this Act before the Government, evidence shall be given by affidavit, provided that the Government may, if it thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit, and shall for that purpose have all the powers of a Civil Court referred to in clause (a) of section 70.

**72.** Where under this Act an applicant has the option of making an application either to the High Court or to Registrar :—

(a) if any suit or other proceedings concerning the trade mark in question is pending before the High Court or a District Court, the application shall be made to the High Court ;

(b) if in any other case the application is made to the Registrar, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the High Court.

**73.** No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted before a District Court having jurisdiction to try the suit.

**74.** (1) In any suit or other legal proceedings in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the tribunal.



(2) Unless the tribunal otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue, or of the grounds of any decision given by him affecting it, or of the practice of the Patent Office in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the suit of other proceedings.

(3) The costs of the Registrar shall be in the discretion of the tribunal but the Registrar shall not be ordered to pay the costs of any of the parties.

**75.** (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts in the State and in all proceedings without further proof of production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or thing having been done or not done.

**76.** (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Government, from any decision of the Registrar under this Act or the rule made thereunder to the High Court :

Provided that if any suit or other proceeding concerning the trade mark in question is pending before the High Court or a District Court, the appeal shall be made to the High Court.

(2) In an appeal by an applicant for registration against a decision of the Registrar under section 13 or section 14 or section 15, it shall not be open save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be ; and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

(3) Subject to the provisions of this Act and of rules made thereunder the provisions of the Code of Civil Procedure shall apply to appeals before the High Court under this Act.



**77.** The High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

Power to the High Court to make rules.

**78.** If in any legal proceeding in which the validity of the registration of a trade mark comes into question, a question, given in favour of the proprietor of the trade mark, the tribunal may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full costs, charges and expenses as between legal practitioner and client.

Certificate of validity.

**79.** In any suit or other proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or get up legitimately used by other persons.

Trade usage, etc. to be taken into consideration

**80.** Where by or under this Act, any act, other than the making of an affidavit, is required to be done by any person, the act may, subject to prescribed conditions or in special cases with the consent of the Government, be done, in lieu of by that person himself, by a duly authorised agent, being either a legal practitioner or a person registered in the prescribed manner as trade marks agent.

Agents.

**81.** There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by the

Fees.

Government.

**82.** The provisions of this Act shall be binding on the Government to be bound.

Government to be bound.

**83.** If at any time after the expiry of six months from the commencement of this section, it is made to appear to the Government that any Government outside the State has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in the State, the Government may, by notification in the Government Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in the State under this Act

Power to make reciprocal arrangements with other Governments.



on his making an application for registration in the State within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.

**84.** (1) The Government may, subject to the condition of <sup>Power of the Government to make rules.</sup> previous publication by notification in the Government Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may —

(a) prescribe the classification of goods for the purpose of the registration of trade mark; and empower the Registrar to amend the register so far as may be necessary for the purpose of adapting the entries therein to any amended or substituted classification which may be prescribed;

(b) require the making of duplicates of trade marks and other documents connected therewith;

(c) provide for securing and regulating the publication, sale or distribution of copies of trade marks and other documents connected therewith;

(d) prescribe additional matters to be entered in the register;

(e) prescribe the conditions and restrictions subject to which the register, the Textile Marks Record and the Refused Textile Marks List may be inspected;

(f) prescribe the form of certificates of registration;

(g) prescribe the conditions under which a trade mark removed from the register may be restored under sub-section (3) of section 18;

(h) prescribe the further documents, information or evidence to accompany an application under sub-section (1) of section 41;

(i) prescribe classes of goods as textile goods for the purposes of Chapter IX;

(j) provide for the constitution of Advisory Committees referred to in section 66, and prescribe the places of meeting, and conduct of business at meetings, of such Committees;

(k) regulate the awarding of costs by the Registrar under section 70;

(l) prescribe the conditions subject to which an agent referred to in section 80 may act;

(m) prescribe the fees to be paid under this Act;

(n) provide for the establishment of branches of the Trade Marks Registry when expedient for facilitating the



working of this Act, and authorities the preparation of copies of the register to be kept at such branch offices ;

(o) prescribe the manner in which, in proceedings under this Act, before the Government or the Registrar, applications shall be made, notices given and matters advertised ;

(p) prescribe times or periods required by this Act to be prescribed ;

(q) provide, generally for regulating the business of the Trade Marks Registry and of branches established under clause (n) or under section 6 }, and for regulating all things by this Act placed under the direction or control of the Government or the Registrar.

**85.** The Government may, by notification in the Government Gazette, provide such procedure as it considers expedient to enable intending applicants to deposit trade marks at the Patent Office before the coming into force of the remaining provisions of this

Power to Government to make provision for applications for registration before the coming into force of the remaining provisions of Act.

Act :

Provided that the deposit of a trade mark under this section shall not affect any right, existing or accruing in the trade mark.

## THE JAMMU AND KASHMIR DRUGS ACT, 2000.

### Act No. XX of 2000.

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## THE JAMMU AND KASHMIR DRUGS ACT, 2000.

Act No. XX of 2000.

[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000/and published in the Government Gazette dated 21st Magh 2000 3rd/February 1944.]

### An Act to regulate the import, manufacture, distribution and sale of drugs.

WHEREAS it is expedient to regulate the import into, and the manufacture, distribution and sale in the State of drugs ; it is hereby enacted as follows :—

Preamble.



## CHAPTER I.

## INTRODUCTORY.

1. (1) This Act may be called the Jammu and Kashmir  
Short title, extent and commencement. Drugs Act, 2000.

(2) It extends to the whole of the Jammu and Kashmir State.

(3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.

2. The provisions of this Act shall be in addition to, and  
Application of other laws not barred. not in derogation of, the Dangerous Drug Rules, made under the Jammu and Kashmir Excise Act, 1958, and any other law for the time being in force.

3. In this Act, unless there is anything repugnant in the subject or context.—  
Definitions.

(a) "the Board" means the Drugs Advisory Board constituted under section 5 ;

(b) "drug" includes all medicines for internal or external use of human beings or animals, and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals, other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine ;

(c) "to import" with its grammatical variations and cognate expressions, means to bring into the State ;

(d) "patent or proprietary medicine" means a drug which is a remedy or prescription prepared for internal or external use of human beings or animals, and which is not for the time being recognised by the permanent Commission on Biological Standardisation of the League of Nations or in the latest edition of the British Pharmacopeia or the British Pharmaceutical Codex or any other Pharmacopeia authorised in this behalf by the Government after consultation with the Board ;

(e) "prescribed" means prescribed by rules made under Chapter II or Chapter IV by the Government.

4. Any substance specified as poisonous by rules made  
Presumption as to poisonous substances. under Chapter IV shall be deemed to be a poisonous substance for the purposes of Chapter III or Chapter IV, as the case may be.



## CHAPTER II.

## THE DRUGS ADVISORY BOARD AND THE DRUG LABORATORY.

5. (1) The Government shall, as soon as may be possible constitute a Board (to be called the Drugs Advisory Board) to advise the Government on technical matters arising out of the administration of this Act and to carry out the other functions assigned to it by this Act.

(2) The Board shall consist of the following members, namely :—

- (i) the Director of Medical Services *ex-officio*, who shall be Chairman ;
- (ii) the Director or Pharmacologist of the Drug Research Laboratory ;
- (iii) one of the Deputy Directors Medical Services, to be nominated by the Director of Medical Services ;
- (iv) the Chemical Examiner ;
- (v) the Superintendent of Jammu or Srinagar Hospital ;
- (vi) two private medical practitioners, one to be elected by the Medical Association Jammu and one by the Medical Association Kashmir.
- (vii) two persons of the pharmaceutical profession to be nominated by the Government, one from the Jammu Province and one from the Kashmir Province.

(3) The nominated and elected members of the Board shall hold office for three years, but shall be eligible for re-nomination or re-election.

(4) The Board may, subject to the previous approval of the Government, make bye-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods, not exceeding three years, as it may decide, or temporarily for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Government shall appoint a person to be Secretary of the Board and shall provide the Board with such clerical and other staffs as the Government consider necessary.



6. (1) The Government shall direct the Drug Research Laboratory to carry out the functions entrusted to it by this Act or any rules made under this Chapter.

(2) The Government may after consultation with the Board, make rules prescribing—

- (a) the functions of the Drug Research Laboratory ;
- (b) the procedure for the grant of certificates of registration under this Act by the said Laboratory in respect of patent or proprietary medicines not having displayed on the label or container thereof the true formula of list of ingredients contained therein in a manner readily in forms of such certificates and the fees payable therefor ;
- (c) the procedure for preserving the secrecy of the formulae of patent or proprietary medicines when disclosed to the said Laboratory under this Act ;
- (d) the procedure for the submission to said Laboratory under Chapter IV of samples of drugs for analysis or test, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports ; and
- (e) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

### CHAPTER III.

#### IMPORT OF DRUGS.

7. (1) For the purposes of this Chapter and Chapter IV, the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

(2) The Government, after consultation with the Board and after giving, by notification in the Government Gazette not less than three months' notice of their intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter and Chapter IV, thereupon the Schedule shall be deemed to be amended accordingly.

8. For the purposes of this Chapter and Chapter IV, a drug shall be deemed to be misbranded—

- (a) if it is an imitation of, or substitute for or resembles



in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or

- (b) if it purports to be the product of a place or country of which it is not truly a product ; or
- (c) if it is imported under a name which belongs to another drug ; or
- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or
- (e) if it is made to appear of better or greater therapeutic value than it really is ; or
- (f) if it is not labelled in the prescribed manner ; or
- (g) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular ; or
- (h) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

**9.** From such date as may be fixed by the Government  
 Prohibition of import of certain drugs. by notification in the Government Gazette in this behalf, no person shall import :—

- (a) any drug which is not of standard quality ;
- (b) any misbranded drug ;
- (c) any drug for the import of which a licence is prescribed, otherwise than under, and in accordance with such licence ;
- (d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted in the prescribed manner in respect of such medicine by the Drug Research Laboratory after being correctly informed of the formula of such medicine ;
- (e) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed ;



Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis or for personal use :

Provided further that the Government may after consultation with the Board, by notification in the Government Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in clause (d) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

**10.** The law for the time being in force relating to Customs and to goods, the import of which is prohibited by an order made by the Government under section 25 of the Jammu and Kashmir Customs Act, 1958 shall, subject to the provisions of section 11 of this Act, apply in respect of drugs the import of which is prohibited under this Chapter, and officers of Customs and Officers empowered under that Act to perform the duties imposed thereby on the Inspector General of Customs and Excise and other officers of Customs shall have the same powers in respect of such drugs as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of section 1, the Inspector General of Customs and Excise, or any officer authorised by the Government in this behalf, may detain any imported package which he suspects to contain any drug the import of which is prohibited under this Chapter, and shall forthwith report such detention to the Director of the Drug Research Laboratory and if required by him, forward the package or samples of any suspected drug found therein to the said Laboratory.

**11.** (1) Whoever contravenes any of the provisions of this Chapter shall, in addition to any penalty to which he may be liable under the provisions of section 10, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees or with both.

(2) Whoever, having been convicted under sub-section (1),



is again convicted under that sub-section shall, in addition to any penalty as aforesaid, be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

**12.** Where any offence punishable under section II has been committed the consignment of the drug in respect of which the offence has been committed shall be liable to confiscation.

**13.** No Court inferior to that of a Magistrate of the first class shall try an offence punishable under section II.

## CHAPTER IV.

### MANUFACTURE, SALE AND DISTRIBUTION OF DRUGS.

**14.** From such date as may be fixed by the Government by notification in the Government Gazette in this behalf, no person shall himself or by any other person on his behalf :—

(a) manufacture for sale, or sell or stock or exhibit for sale or distribute—

- (i) any drug which is not of standard quality ;
- (ii) any misbranded drug ;
- (iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of certificate of registration granted, in the manner prescribed by the Government in respect of such medicine by the Drug Research Laboratory after being correctly informed of the formula of such medicine ;

(iv) any drug which by means of any statement, design or device accompanying it or by any other means purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed ;

(v) any drug, in contravention of any of the provisions of this Chapter or any rule made thereunder ;

(b) sell, or stock or exhibit for sale, or distribute any drug which has been imported or manufactured in



contravention of any of the provisions of this Act or any rule made thereunder ;

(c) manufacture for sale, or sell or stock or exhibit for sale, or distribute any drug, except under, and in accordance with the condition of a licence issued for such purpose under this Chapter :

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions of small quantities of any drug for the purposes of examination, test or analysis :

Provided further that the Government may, after consultation with the Board, by notification in the Government Gazette, permit subject to any conditions specified in the notification the manufacture for sale or distribution of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in sub-clause (iii) of clause (a) shall be deemed to be true and a sufficient compliance with that sub-clause if without disclosing a full and detailed recipe of the ingredients it indicates correctly all the potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

**15.** (1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug in respect of which the offence has been committed or of the circumstances of its manufacture or import or that a purchaser having bought only for the purpose of test or analysis has not been prejudiced by the sale.

Pleas

(2) For the purposes of section 14 a drug shall not be deemed to be misbranded or to be below standard quality only by reason of the fact that :—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug or to conceal its inferior quality or other defects ; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it ; provided that this clause shall not apply in relation to any sale or distribution of the drug occurring after the vendor or distributor became aware of such intermixture.

(3) A person not being the manufacturer of a drug or



his agent for the distribution thereof, shall not be liable for a contravention of section 14 if he proves :—

(a) that he did not know, and could not with reasonable diligence have ascertained, that the drug in any way contravened the provision of that section and that the drug while in his possession remained in the same state as when he acquired it ; or

(b) that he acquired the drug from a person resident in the State under a written warranty in the prescribed form and signed by such person that the drug does not in any way contravene the provisions of section 14, and that the drug while in his possession remained in the same state as when he acquired it :

Provided that a defence under clause (b) shall be open to a person only—

(i) if he has, within seven days of the service on him of the summons, sent to the Inspector a copy of the warranty with a written notice stating that he intends to rely upon it and giving the name and address of the warrantor and

(ii) if he proves that he has within the same period, sent written notice of such intention to the said warrantor.

**16.** The Government may, by notification in the Government Gazette, appoint such persons as they think fit, having the prescribed qualifications, to be Government Analysts for such areas and in respect of such drugs or classes of drugs as may be specified in the notification.

**17.** (1) The Government may, by notification in the Government Gazette, appoint such persons as they think fit, having the prescribed qualifications, to be Inspectors for the purposes of this Chapter within such local limits as the Government may assign to them respectively :

Provided that no person who has any financial interest in the manufacture, import or sale of drugs shall be appointed to be an Inspector under this sub-section.

(2) Every Inspector shall be deemed to be a public servant within the meaning of the Ranbir Penal Code and shall be officially subordinate to such authority as the Government may specify in his behalf.

**18.** Subject to the provisions of section 19 and of any rules made by the Government in this behalf, an Inspector may within the local limits for which he is appointed—

(a) inspect any premises wherein any drug is being manufactured and in the case of sera, vaccines and any other



drug prescribed in this behalf the plant and process of manufacture and the means employed for standardizing and testing the drugs ;

(b) take samples of any drug which is being manufactured, or being sold or is stocked or exhibited for sale, or is being distributed ;

(c) where he has reason to believe that any drug which is being manufactured for sale, or being sold or is stocked or exhibited for sale, or is being distributed, contravenes any of the provisions of section 14, order in writing the persons, in whose possession such drug may be not to dispose of any stock of such drug for specified period not exceeding 10 days or, unless the alleged contravention is such that the defect may be removed by the possessor of the drug, seize the stock of such drug ; Provided that the Inspector shall not take any action under this clause unless he has reported the facts to the District Magistrate, or the Additional District Magistrate or the Sub-Divisional Magistrate and has been authorised by him to take such action ;

(d) for any of the aforesaid purposes enter at all reasonable times with such assistants, if any, as he considers necessary, any premises wherein any drug is being manufactured or being sold or is stocked or exhibited for sale, or is kept for distribution ;

(e) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

**19.** (1) Where an Inspector takes any sample of a drug under this Chapter, he shall tender its fair price and may require a written acknowledgement therefor.

(2) Where the price tendered under sub-section (1) is refused ; or where the Inspector seizes the stock of any drug under clause (c) of section 18, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked :

Provided that where the sample is taken from premises whereon the drug is being manufactured, it shall be necessary to divide the sample into three portions only :



Provided further that where the drug is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second he shall produce in the Court before which proceedings, if any, are instituted in respect of the drug; and

(iii) the third, where taken, he shall send to the warrantor, if any, named under the proviso to sub-section (3) of section 15.

(5) Where an Inspector takes any action under clause (c) of section 18:—

(a) he shall use all despatch in ascertaining whether or not the drug contravenes any of the provisions of section 14 and, if it is ascertained that the drug does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the drug, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

**20.** Every person for the time being in charge of any premises whereon any drug is being manu-

Persons bound to disclose place where drugs are manufactured or kept.

factured or is kept for sale or distribution shall, on being required by an

Inspector so to do, be legally bound to disclose to the Inspector the place where the drug is being manufactured or is kept, as the case may be.

**21.** (1) The Government Analyst to whom a sample of any drug has been submitted for test or analysis under sub-section (4) of section 19, shall deliver to the Inspector submitting it a signed

Reports of Government Analysts.



report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the warrantor, if any, named under the proviso to sub-section 3 of section 15 and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein and such evidence shall be conclusive unless the person from whom, the sample, was taken or the said warrantor, has within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

(4) Unless the sample has already been tested or analysed in the Drug Research Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contravention of a Government Analyst's report the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug produced before the Magistrate under sub-section (4) of section 19 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of the Director of Drug Research Laboratory the result thereof and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Drug Research Laboratory under sub-section (4) shall be paid by the complainant or the accused as the Court shall direct.

**22.** A person shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug purchased by him and to receive a report of such test or analysis signed by the Government Analyst.

**23.** Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale, or distributes any drug in contravention of any of the provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalty for manufacture, sale etc. of drugs in contravention of this Chapter.



**24.** Whoever, in respect of any drug sold by him whether as principal or agent, gives to the purchaser a false warranty that the drug does not in any way contravene the provisions of section 14 shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalties for giving false warranty or misuse of warranty.

(2) Whoever applies or permits to be applied to any drug sold, or stocked or exhibited for sale, by him, whether on the container or label or in any other manner, a warranty given in respect of any other drug shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

**25.** Whoever uses any report of a test or analysis made by the Drug Research Laboratory or by a Government Analyst, or any extract from such report for the purpose of advertising any drug shall be punishable with fine which may extend to five hundred rupees.

Penalty for use of Government Analyst's report for advertising.

**26.** Whoever, having been convicted of any offence under section 23 or section 24 or section 25, is again convicted of an offence under the same section shall be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees or with both.

Penalty for subsequent offences.

**27.** Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rules made in this behalf, the stock of the drug in respect of which the contravention has been made shall be liable to confiscation.

Confiscation

**28.** (1) No prosecution under this Chapter shall be instituted except by an Inspector.

Cognizance of offences.

(2) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Chapter.

**29.** The Government may, after consultation with the Board and after previous publication by notification in the Government Gazette,

Power to make rule.



make rules for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may —

(a) provide for the establishment of laboratories for testing and analysing drugs ;

(b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors ;

(c) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality ;

(d) prescribe in respect of biological and organometallic compounds, the units or method of standardization ;

(e) prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of drugs, or any specified drug or class of drugs, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor ;

(f) specify the diseases or ailments which a drug may not purport or claim to cure or mitigate and such other effects which a drug may not purport or claim to have ;

(g) prescribe the conditions subject to which small quantities of drugs may be manufactured for the purpose of examination, test or analysis ;

(h) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified drug or class of drugs and prohibit the sale, stocking or exhibition for sale, or distribution of the said drug or class of drugs after the expiry of a specified period from the date of manufacture or after the expiry of the date of potency ;

(i) prescribe the conditions to be observed in the packing in bottles, packages and other containers of drugs, and prohibit the sale, stocking or exhibition for sale, or distribution of drugs packed in contravention of such conditions ;

(j) regulate the mode of labelling packed drugs and prescribe the matters which shall or shall not be included in such labels ;

(k) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any drug, prohibit the manufacture, sale or stocking or exhibition for sale or distribution of any drug in which that proportion is exceeded, and specified substances which shall be deemed to be poisonous for the purposes of this Act and the rules made thereunder ;



(l) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any patent or proprietary medicine containing such drug ;

(m) prescribe the form of warranty referred to in subsection (3) (b) of section 15 ;

(n) regulate the powers and duties of Inspectors ;

(o) prescribe the form of report to be given by Government Analysts, and the manner of application for test or analysis under section 22 and the fees payable therefor ;

(p) specify the offences against this Chapter or any rule made thereunder in relation to which the stock of the drug shall be liable to confiscation under section 27 ;

(q) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Act or the rules made thereunder of any specified drug or class of drugs.

**30.** No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Protection to persons acting under this Act.

#### THE SCHEDULE.

(See section 7)

*Standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale or distributed.*

Class of drugs.	Standard to be complied with.
1. Patent of proprietary medicines.	The formula or list of ingredients displayed in the prescribed manner on the label or container, or the formula disclosed or to the Drug Research Laboratory, as the case may be.
2. Substances commonly known as vaccines sera, toxins, toxoids, anti-toxins and antigens and biological products of such nature.	The standards maintained at the National Institute and Medical Research, London and such further standards of strength, quality and purity as may be prescribed.



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|---|--|
| 4. Vitamins, hormones and analogous products. | The standards maintained at the National Institute for Medical Research, London and such further standards of strength, quality and purity as may be prescribed.   |
| 4. Other drugs                                | ... The standard of identity, purity and strength specified in the latest edition of the British Pharmacopeia or the British Pharmaceutical Codex or any other prescribed pharmacopeia, or adopted by the Permanent Commission on Biological Standardisation of the League of Nations. |

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## THE JAMMU AND KASHMIR VENEREAL DISEASES ACT, 2000.

**Act No. XXI of 2000.**

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# THE JAMMU AND KASHMIR VENEREAL DISEASES ACT, 2000.

Act No. XXI of 2000.

*[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Magher 2000 and published in the Government Gazette dated 21st Magh 2000/3rd February 1944.]*

## An Act to provide for the Registration of persons suffering from venereal diseases and their treatment.

WHEREAS it is expedient to provide for the registration of persons suffering from venereal diseases and their treatment; It is hereby enacted as follows:—

Preamble.

1. (i) This Act may be called the Jammu and Kashmir Venereal Diseases Act, 2000.

Short title, extent and commencement.

(ii) It extends to the District of Udhampur and the Tehsils of Basohli and Reasi of Kathua and Reasi Districts respectively.

The Government may, by notification in the Government Gazette, extend it to the whole or any specified part of the State.

(iii) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.

2. Unless there is anything repugnant in the subject or context:—

Definitions.

(i) "venereal disease" includes syphilis, gonorrhoea, chandroid, granuloma venereum;

(ii) "Government dispensary" includes a Government hospital or a centre opened by the Government for the purpose of diagnosis and treatment of persons suffering from venereal diseases;

(iii) "Medical Officer" means the Medical Officer-in-charge of a Government dispensary;

(iv) "prescribed" means prescribed by rules made under this Act.

3. Every person knowing that he is suffering from a venereal disease shall have his name and other prescribed particulars registered in the manner indicated in section 4 of the Act.

Duty of person suffering from a venereal disease to have his name etc registered.



**4.** Every Medical Officer shall maintain a register in Maintenance of a the prescribed form and shall enter or register. cause to be entered therein the names and other prescribed particulars of persons suffering from a venereal disease and ordinarily residing within his jurisdiction.

**5.** Every medical practitioner including a Hakim or a Duty of Medical Prac- Vaid who in the course of his professional tioner. duty or otherwise comes to know that any person is suffering from a venereal disease, shall forthwith report the name and such other particulars of such person as are within his knowledge to the Medical Officer within whose jurisdiction such person ordinarily resides.

**6.** Every person suffering from a venereal disease shall offer himself for examination for the purposes of diagnosis and treatment of such disease before any qualified Hakim, Vaid or other medical practitioner and shall undergo such treatment as such Hakim, Vaid or medical practitioner may prescribe for him. १ १

**7.** The Government shall provide free of charge facilities necessary for examination, diagnosis and treatment of venereal diseases in the existing dispensaries and such other dispensaries, as the Government may open in different localities, for male as well as for female patients.

**8.** Any medical officer or qualified private or subsidized medical practitioner shall be entitled to obtain free of cost a scientific report from any Government clinic or laboratory on any material which such medical practitioner may submit from a patient suspected to be suffering from a venereal disease.

**9.** All information obtained regarding diagnosis and treatment of any person suffering from a venereal disease shall be regarded as strictly confidential. Secrecy of information.

**10.** (1) Whoever contravenes any of the provisions of sections 3, 5, 6, and 9 of this Act shall be punishable with fine which may extend to twenty-five rupees. Penalty

(2) Whoever, having been convicted under sub-section (1), is again convicted under that sub-section shall be punishable with a fine which may extend to one hundred rupees.

**11.** (1) The Government may make rules for carrying out the provisions of this Act. Power to make rules.



(2) In particular and without prejudice to the generality of the foregoing power such rules may:—

(a) prescribe the form of the register to be maintained under section 4 ;

(b) specify the particulars to be given by a person registering his name under section 3 ;

(c) provide for the distribution of anti-venereal drugs amongst the private medical practitioners and the minimum qualifications of such medical practitioners ; and

(d) provide for the examination, diagnosis and treatment of females suffering from a venereal disease.

**12.** No Court shall take cognizance of an offence under sections 3 and 6 of this Act, except on the complaint of a Medical officer.

**Prosecution for offences under sections 3 and 6 of this Act.**

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# LAWS OF JAMMU AND KASHMIR.

(Being a collection of all the enactments whether passed by the Praja Sabha and assented to by His Highness the Maharaja Bahadur or made and issued by His Highness, and in force in the Jammu and Kashmir State.)

## SUPPLEMENT 2000.



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**Prefaratory Note.**

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Supplement for S. 2000 to the Laws of Jammu and Kashmir is published to make the laws up to date. It contains all the Acts of Samvat year 2000. It is proposed to issue every year an annual supplement until a revised edition of the Laws of Jammu and Kashmir is published.

Correction slips for every year issued by the Law Department are supplied by the Press on moderate price.

(Sd.) BADRI NATH,

*Deputy Legal Remembrancer.*

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# THE JAMMU AND KASHMIR SUGAR (EXCISE DUTY) ACT, 2000.

Act No. VI of 2000.

*[Received assent of His Highness the Maharaja Bahadur on 24th May 1943/11th Jeth 2000 and published in the Government Gazette dated 21st Sawan 2000/5th August 1943.]*

**An Act to provide for the imposition and collection of excise duty on sugar.**

WHEREAS it is expedient to impose an Excise Duty on sugar produced in factories and to provide for the collection thereof ; It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir Sugar (Excise Duty) Act, 2000.

Short title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.



(3) The Act shall come into force on such date as the Government may by notification in the Government Gazette appoint in this behalf.

2. In this Act unless there is anything repugnant in the subject or context,—

Definitions.

(a) “factory” means any premises in any part of which any manufacturing process connected with the production of sugar is being carried on or is ordinarily carried on with the aid of power ;

(b) “owner” includes any person expressly or impliedly authorised by the owner of a factory to be his agent in respect of such factory ;

(c) “sugar” means any form of sugar containing more than ninety per cent of sucrose ;

(d) “khandsari sugar” means sugar in the manufacture of which neither a vacuum pan nor a vacuum evaporator is employed ; and

(e) “palmyra sugar” means sugar manufactured from jaggery obtained by boiling the juice of the palmyra palm.

3. (1) A duty of excise shall be levied on all sugar produced in any factory in the State and either issued out of such factory on or after the day of coming into force of this Act, or used within such factory on or after the said date in the manufacture of any commodity other than sugar, and shall be payable by the owner of the factory.

(2) The duty payable under sub-section (1) shall be at the following rates, namely :—

(i) on khandsari sugar at the rate of two rupees and twelve annas per maund ;

(ii) on all other sugar except palmyra sugar at the rate of three rupees and four annas per maund ;

(iii) on palmyra sugar at such rate, if any, as may be fixed in this behalf by the Government after such enquiry as they may think fit.

4. (1) If any duty payable under section 3 is not paid within the time fixed by rules made in that behalf under this Act, it shall be deemed to be an arrear, and the authority to which such duty is payable may, in lieu thereof, recover any sum not exceeding double the amount of duty unpaid which such authority may in its discretion think it reasonable to require.

(2) An arrear of duty, or any sum recoverable in lieu thereof under this section shall be recoverable as an arrear of



land revenue and shall be recoverable in addition to, and not in substitution for, any other penalty incurred under this Act.

**5.** No person shall issue any sugar out of a factory except in accordance with the provisions of rules made in that behalf under this Act, or, until such rules are made in accordance with the general or special orders of the Government.

**6.** Whoever contravenes the provisions of section 5 shall be punishable with fine which may extend to two thousand rupees.

Penalty for issue of sugar from factory in contravention of section 5

**7.** Whoever evades or attempts to evade the payment of any duty payable by him under this Act, or fails to supply any information which he is required by any rule made under this Act to supply, or knowingly supplies false information, shall be punishable with imprisonment, which may extend to six months or with fine which may extend to two thousand rupees, or with both.

Penalty for evasion of duty or failure to supply information.

**8.** Any Court trying an offence under this Act may order that any sugar, together with the packages or coverings thereof, in respect of which the Court is satisfied that an offence under this Act has been committed, shall be forfeited to His Highness the Maharaja Bahadur.

Power of Court to order forfeiture of sugar

**9.** The Government may, by notification in the Government Gazette, declare that any of the provisions of the Jammu and Kashmir Customs Act, 1958 relating to the levy of and exemption from customs duties, drawback of duty, warehousing offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adopt them to the circumstances, be applicable in regard to like matters in respect of the duty on sugar imposed by section 3.

Application of the provisions of Customs Act to the duty on sugar.

**10.** (1) The Government may by notification in the Government Gazette, make rules to carry into effect the purposes and objects of this Act.

Power of Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the assessment and collection of the duty and the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment



the manner in which the duty shall be payable, and the recovery of arrears ;

(b) regulate the issue of sugar out of or the use of sugar in the manufacture of commodities within any factory and provide for the appointment of officers of the State to supervise within any factory such issue or use ;

(c) impose on the owners of factories, and on persons engaged in the sale of sugar, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified ;

(d) provide for the detention of sugar for the purpose of exacting the duty, the confiscation otherwise than under section 8 of sugar in respect of which breaches of the Act or rules have been committed and the disposal of sugar so detained or confiscated ;

(e) authorise and regulate the inspection or search of any place or conveyance used for the manufacture, storage or carriage of sugar ; and

(f) authorise and regulate the composition of offences against or liabilities incurred under the Act and rules.

(3) In making any rule under this section the Government may provide that a breach of the rules shall, where no other penalty is provided by this Act, be punishable with fine not exceeding two thousand rupees.

## **THE WORKMEN'S COMPENSATION ACT, 2000.**

### **Act No. VII of 2000.**

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**THE WORKMEN'S COMPENSATION ACT, 2000.****Act No. VII of 2000.**

*[Received assent of His Highness the Maharaja Bahadur on 24th May 1943/11th Jeth 2000 and published in the Government Gazette dated 28th Sawan 2000/12th August 1943.]*

**An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.**

WHEREAS it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident; It is hereby enacted as follows:—

Preamble.

**CHAPTER I.****PRELIMINARY.**

**1.** (1) This Act may be called the Workmen's Compensation Act, 2000.

Short title

(2) It extends to the whole of the Jammu and Kashmir State.

Extent.

**2.** (1) In this Act unless there is anything repugnant in the subject or context:—

Definitions.

(a) "adult" and "minor" mean respectively a person who is not and a person who is under the age of 15 years;

(b) "commissioner" means a commissioner appointed for workmen's compensation under section 20;

(c) "compensation" means compensation as provided for by this Act;

(d) "dependant" means any of the following relatives of a deceased workman, namely,—

(i) a widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother; and

(ii) if wholly or in part dependent on the earnings of the workman at the time of his death, a widower, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter



in-law, a minor child of a deceased son, a minor child of a deceased daughter where no parent of the child is alive, or where no parent of the workman is alive a paternal grandparent;

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into contract of service or apprenticeship means such other person while the workman is working for him;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager sub-ordinate to an employer;

(g) "partial disablement" means where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time; provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "qualified medical practitioner" means any person registered under the Jammu and Kashmir Medical Registration Act, 1998;

(j) "total disablement" means such disablement whether of a permanent or of a temporary nature as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement; provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I, where the aggregate percentage of the loss of earning capacity, as specified in that schedule against those injuries, amounts to one hundred per cent;

(k) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman



to cover any special expenses entailed on him by the nature of his employment ;

(1) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is on monthly wages not exceeding one hundred rupees in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing but does not include any person working in the capacity of a member of His Highness' Forces and any reference to a workman who has been injured shall, when the workman is dead, include a reference to his dependents, or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department of the Government, shall for the purposes of this Act, unless a contrary intention appears be deemed to be the trade or business of such authority or department.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may by a like notification add to Schedule II any class of persons employed in any occupation which they are satisfied is a hazardous occupation and the provisions of this Act shall thereupon apply to such class of persons :

Provided that in making such addition the Government may direct that the provisions of this Act shall apply to such classes of persons for specified injuries only.

## CHAPTER II.

### WORKMEN'S COMPENSATION.

**3.** (1) If personal injury is caused to a workman by Employer's liability for compensation. accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter, provided that the employer shall not be so liable :—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding seven days ;

(b) in respect of any injury not resulting in death caused by an accident which is directly attributable to :—

(i) the workman having been at the time thereof



- under the influence of drink or a drug, or
- (ii) the wilful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workmen, or
  - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

(2) If a workman employed in any employment specified in part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in part B of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

*Explanation.*—For the purpose of this sub-section, a period of service shall be deemed to be continuous which has not included a period of service under any other employer in the same kind of employment.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided in sub-sections (2) and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil Court a suit for damages in respect of the injury against the employer or any other



person ; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury :—

(a) if he has instituted a claim to compensation in respect of the injury before a commissioner ; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

4. (1) Subject to the provisions of this Act the amount of compensation shall be as follows, viz :—

Amount of compensation.

A. where death results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof, and

(ii) in the case of a minor—two hundred rupees.

B. Where permanent total disablement results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and

(ii) in the case of a minor—twelve hundred rupees.

C. Where permanent partial disablement results from the injury—

(i) in the case of an injury specified in Schedule I such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury ; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

*Explanation.*—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which should have been payable if permanent total disablement has resulted from the injuries.

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the 16th day after the expiry of a waiting period of seven days from the date of the disablement, and there-



after half-monthly during the disablement or during a period of five years, whichever period is shorter—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule III of the sum shown against such limits in the fourth column thereof, and

(ii) in the case of a minor of one-half of his monthly wages subject to a maximum of thirty rupees :

Provided that (a) there shall be deducted from any lump-sum or half monthly payments to which the workman is entitled, the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump-sum or of the first half-monthly payment, as the case may be, and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half month a sum proportionate to the duration of the disablement in that half month.

**5.** For the purposes of this Act the monthly wages of a workman shall be calculated as follows, namely :—

Method of calculating wages.

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period ;

(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of a workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or if there was no workman so employed, by a workman employed on similar work in the same locality ;

(c) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous



period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period.

*Explanation.*—A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

**6.** (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a commissioner may be reviewed by the commissioner, on the application of either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lumpsum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

**7.** Any right to receive half-monthly payments may, by agreement between the parties, or if the parties cannot agree and the payments have been continued for not less than six months on the application of either party to the commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the commissioner, as the case may be.

**8.** (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased workman an employer may make to any dependent advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependent, shall be deducted by the commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten rupees



which is payable as compensation may be deposited with the commissioner on behalf of the person entitled thereto.

(3) The receipt of the commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman the commissioner shall deduct therefrom the actual costs of the workman's funeral expenses to an amount not exceeding twenty-five rupees and pay the same to the person by whom such expenses were incurred and shall, if he thinks necessary, cause notice to be published or to be served on each dependent in such manner as he thinks fit calling upon the dependents to appear before him, personally or through some attorney, or for determining the distribution of compensation. If the commissioner is satisfied, after any inquiry which he may deem necessary that no dependent exists he shall repay the balance of the money to the employer by whom it was paid. The commissioner shall, on application, by the employer, furnish a statement showing in details all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall subject to any deduction made under sub-section (4) be apportioned among the dependents of the deceased workman or any of them in such proportion as the commissioner thinks fit or may in the discretion of the commissioner be allotted to any one dependent.

(6) When any compensation deposited with the commissioner is payable to any person, the commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump-sum deposited with the commissioner is payable to a woman or a person under a legal disability such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability the commissioner may of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependent of the workman or to any other person whom the commissioner thinks best fitted to provide for the welfare of the workman.

(8) Where, on application made to him in this behalf or otherwise, the commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or any



other sufficient cause, an order of commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with ought to be varied the commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made or shall be made in any case in which it would involve the repayment by a dependent of any sum already paid to him.

(9) Where the commissioner varies any order under sub-section (8) by reason of the facts that payment of compensation to any person has been obtained by fraud, impersonation or other improper means any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

**9.** Save as provided by this Act, no lump-sum of half-  
 Compensation not to be assigned, attached or charged. monthly payment under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

**10.** (1) No claim for compensation shall be entertained  
 Notice and claim. by a commissioner unless notice of the accident has been given, in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within one year of the occurrence of the accident or, in case of death within one year from the date of death :

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Provided further that the want of or any defect, or irregularity in a notice shall not be a bar to the entertainment of a claim---

(a) if a claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the



workman died on such premises or at such place or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of the several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further, that the commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given or the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened and shall be served on the employer or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to injured workman employed on the premises and to any person acting *bonafide* on his behalf.

(4) A notice under this section may be served by delivering it at or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served, or where a notice book is maintained by entry in the notice book.

**11.** (1) Where a commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement in the prescribed form, giving the circumstances attending the death of the workman and indicating whether in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation he shall make the deposit within thirty days of the service of notice.



(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the commissioner after such inquiry as he may think fit, may inform any of the dependents of the deceased workman that it is open to the dependents to prefer a claim for compensation, and may give them such other further information as he may think fit.

**12.** (1) Where, by any law for the time being in force, Report of fatal accidents. notice is required to be given to any authority by or on behalf of the employer, of any accident occurring on his premises which result in death, the person required to give the notice shall, within seven days of the death, send a report to the commissioner giving the circumstances attending the death :

Provided that where the Government has so prescribed the person required to give the notice may instead of sending such report to the commissioner send it to the authority to whom he is required to give the notice.

(2) The Government may, by notification in the Government Gazette, extend the provisions of sub-section (1) to any class or premises other than those coming within the scope of that sub-section and may, by such notification, specify the persons who shall send the report to the commissioner.

**13.** (1) Where a workman has given notice of an accident, Medical examination. he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time :

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.



(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leave without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman whose right to compensation has been suspended under sub-section (2) or sub-section (3) dies without having submitted himself for medical examination as required by either of those sub-sections, the commissioner may, if he thinks fit, direct the payment of compensation to the dependents of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner whose instructions he had followed and compensation if any shall be payable accordingly.

**14.** (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that

Contracting.



workman had been immediately employed by him, and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes as the case may be, to execute the work or which are otherwise under his control or management.

**15.** Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 14 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

**16.** (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon



any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer so however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia) the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurer of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under order 21-A of the Jammu and Kashmir Code of Civil Procedure or under section 230 of the Companies Act, 1977, or in the distribution of the property of an insolvent or in the distribution of the assets of the company being wound up to be paid in priority to all other debts, the amounts due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof, shall for the purposes of this section, be taken to be the amount of the lump-sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound



up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

**17.** The Government may by notification in the Government Gazette, direct that every person employing workmen or that any specified class of such persons shall send at such time and in such form and to such authority, as may be specified in the notification a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the Government may direct.

**18.** Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

**19.** Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory a valid certificate granted in respect of such person under section 10 or section 44 of the Jammu and Kashmir Factories Act, 1999 before the occurrence of the injury shall be conclusive proof of the age of such person.

Penalties.

**20. (1)** Whoever—

(a) fails to maintain a notice book which he is required to maintain under sub-section (3) of section 10, or

(b) fails to send to the commissioner a statement which he is required to send under sub-section (1) of section 11, or

(c) fails to send a report which he is required to send under section 12, or

(d) fails to make a return which he is required to make under section 17 shall be punished with fine which may extend to one hundred rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a commissioner, and no Court shall take cognisance of any offence under this section unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.



## CHAPTER III.

## COMMISSIONERS.

**21.** (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a commissioner.

(2) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a commissioner or to enforce any liability incurred under this Act.

**22.** (1) The Government may, by notification in the Government Gazette, appoint any person to be a commissioner for workmen's compensation for such local area as may be specified in the notification.

(2) Where more than one commissioner has been appointed for any local area the Government may, by general or special order, regulate the distribution of business between them.

(3) Any commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under enquiry to assist him in holding the enquiry.

(4) Every commissioner shall be deemed to be a public servant within the meaning of the Ranbir Penal Code.

**23.** Where any matter is under this Act to be done by or before a commissioner the same shall, subject to the provisions of this Act, and to any rules made hereunder, be done by or before a commissioner for the local area in which the accident took place which resulted in the injury.

(2) If a commissioner is satisfied that any matter arising out of the proceedings, pending before him can be more conveniently dealt with by any other commissioner, whether in the same province or not, he may, subject to rules made under this Act, order such matter to be transferred to such other commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other



commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings :

Provided that the commissioner shall not, where any party to the proceeding has appeared before him, make any order of transfer relating to the distribution among dependents of a lumpsum without giving such party an opportunity of being heard :

Provided further, that no matter other than a matter relating to the actual payment to a workman or the distribution among dependents of a lump-sum shall be transferred for disposal under this sub-section to a commissioner save with the previous sanction of the Government unless all the parties to the proceedings agree to the transfer.

(3) The commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and if the matter was transferred for report return his report thereon or, if the matter was transferred for disposal continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a commissioner to whom any matter has been transferred for report under sub-section (2), the commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The Government may transfer any matter from any commissioner appointed by them to any other commissioner appointed by them.

**24.** (1) No application for the settlement of any matter by a commissioner other than an application by a dependent or dependents for compensation shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) An application to a commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain in addition to any particulars which may be prescribed, the following particulars namely:—

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims ;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the



employer and if such notice has not been served or has not been served in due time, the reasons for such omission ;

(c) the names and the addresses of the parties ; and

(d) except in the case of an application by dependents for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the commissioner.

**25.** (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the commissioner such sum is insufficient, the commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

Power of commissioner to require further deposits in case of fatal accidents.

(2) If the employer fails to show cause to the satisfaction of the commissioner, the commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

**26.** The commissioner shall have all the powers of a civil Court under the Code of Civil Procedure, 1977 for the purpose of taking evidence on oath which such commissioner is hereby empowered to impose and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the commissioner shall be deemed to be a civil Court for all the purposes of section 195 and chapter XXXV of the Code of Criminal Procedure, 1989.

Powers and procedure of commissioner.

**27.** Any appearance, application or act required to be made or done by any person before or to a commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company, or with the permission of the commissioner by any other persons so authorised.

Appearance of parties.

**28.** The commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed

Mode of recording evidence



by the commissioner with his own hand and shall form part of the record:

Provided that, if the commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record: Provided further, that the evidence of any medical witness shall be taken-down as nearly as may be word for word.

**29.** All costs incidental to any proceedings before a commissioner shall, subject to rules made under this Act, be in the discretion of the commissioner.

**30.** A commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so shall decide the question in conformity with such decision.

**31.** (1) Where the amount of any lump-sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability a memorandum thereof shall be sent by the employer to the commissioner, who shall on being satisfied as to its genuineness record the memorandum in a register in the prescribed manner:

Provided that—

(a) no such memorandum shall be recorded before seven days after communication by the commissioner of notice to the parties concerned;

(b) the commissioner may at any time rectify the register;

(c) where it appears to the commissioner that an agreement as to the payment of a lump-sum whether by way of redemption of a half-monthly payment or otherwise or an agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything



contained in the Jammu and Kashmir Contract Act, 1977 or in any other law for the time being in force.

**32.** Where a memorandum of any agreement, the registration of which is required by section 31 is not sent to the commissioner as required by that section the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

**33.** (1) An appeal shall lie to the High Court from the following orders of a commissioner, namely :—

Appeal

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum ;

(b) an order refusing to allow redemption of a half-monthly payment ;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman or disallowing any claim of a person alleging himself to be such dependent ;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 14, or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided further, that no appeal shall lie in any case in which the parties have agreed to abide by that decision of the commissioner, or in which the order of the commissioner gives effect to an agreement come to by the parties. Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.



(2) The period of limitation for an appeal under this section shall be ninety days.

(3) The provisions of section 5 of the Jammu and Kashmir Limitation Act, 1995 shall be applicable to appeals under this section.

**34.** Where an employer makes an appeal under clause (a) of sub-section (I) of section 33 the commissioner may and if so directed by the High Court shall pending the decision of the appeal withhold payment of any sum in deposit with him.

Withholding of certain payment pending decision of appeal.

**35.** Any amount payable by any person under this Act whether under an agreement for the payment of compensation or otherwise may be recovered as an arrear of land revenue.

Recovery.

## CHAPTER IV.

### RULES.

**36.** (1) The Government may make rules to carry out the purposes of this Act.

Powers of the Government to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:—

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;

(b) for prescribing the intervals which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (I) of section 13;

(c) for prescribing the procedure to be followed by commissioners in the disposal of cases under this Act and by the parties in such cases;

(d) for regulating the transfer of matters and cases from one commissioner to another and the transfer of money in such cases;

(e) for prescribing the manner in which money in the hands of a commissioner may be invested for the benefit of dependents of a deceased workman and for the transfer of money so invested from one commissioner to another;



(f) for the representation in proceedings before commissioners of parties who are minors or are unable to make an appearance;

(g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered;

(h) for withholding by commissioners whether in whole or in part of half-monthly payments pending decision on applications for review of the same;

(i) for regulating the scales of costs which may be allowed in proceedings under this Act;

(j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a commissioner under this Act;

(k) for the maintenance by commissioners of registers and records of proceedings before them;

(l) for prescribing the classes of employers who shall maintain notice books under sub-section 3 of section 10 and the form of such notice books;

(m) for prescribing the form of statement to be submitted by employers under section 11; and

(n) for prescribing the cases in which the report referred to in section 12 may be sent to an authority other than the commissioner.

**37.** (1) The power to make rules conferred by section 36 shall be subject to the condition of the rules being made after previous publication.

Previous publication  
of rules.

(2) The date to be specified in accordance with section 23 of the Jammu and Kashmir General Clauses Act, 1977, as that after which a draft of rules proposed to be made under section 36 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Government Gazette and on such publication shall have effect as if enacted in this Act.

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**Workmen's Compensation.****SCHEDULE I.**

[See sections 2 (1) and (4)]

*List of injuries deemed to result in permanent partial disablement.*

Injury.	Percent- age of loss of earning capacity.
Loss of right arm above or at the elbow	70
Loss of left arm above or at the elbow	60
Loss of right arm below the elbow	60
Loss of leg at or above the knee	60
Loss of left arm below the elbow	50
Loss of leg below the knee	50
Permanent total loss of hearing	50
Loss of one eye	30
Loss of thumb	25
Loss of all toes of one foot	20
Loss of one phalanx of thumb	10
Loss of index finger	10
Loss of great toe	10
Loss of any finger other than index finger	5

NOTE.—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

**SCHEDULE II.**

[See section 2 (1) (l)]

*List of persons who, subject to the provisions of section 2 (1) (l), are included in the definition of workmen.*

The following persons are workmen within the meaning of section 2 (1) (l) and subject to the provisions of that section, that is to say, any person who is—

1. (i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity, or



(ii) employed otherwise than in a clerical capacity in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been employed in any manufacturing process, as defined in clause (g) of section 2 of the Jammu and Kashmir Factories Act, 1999, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months, fifty, or more persons have been so employed; or

(iv) employed in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been so employed; or

(v) employed in any mine, in any mining operation, or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground;

Provided that any excavation in which on no day of the preceding twelve months more than fifty persons have been employed or explosives have been used and whose depth from its highest to its lowest point does not exceed twenty feet shall be deemed not to be a mine for the purpose of this clause; or

(vi) employed in the construction, repair or demolition of—

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twenty feet or more from the ground level to the apex of the roof; or

(b) any dam or embankment which is twenty feet or more in height from lowest to its highest point; or

(c) any road, bridge, or tunnel; or

(vii) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard for the same; or

(viii) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal pipe-line, or sewer; or



- (ix) employed in the service of any fire brigade ; or
- (x) employed upon a railway either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration ; or
- (xi) employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas ; or
- (xii) employed in any occupation involving blasting operations ; or
- (xiii) employed, in the making of any excavation in which on any one day of the preceding twelve months more than fifty persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet ; or
- (xiv) employed in the operation of any ferry boat capable of carrying more than ten persons ; or
- (xv) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed ; or
- (xvi) employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical energy or in the generating or supplying of gas ; or
- (xvii) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures ; or
- (xviii) employed in the training or keeping of wild animals ; or
- (xix) employed in lopping, felling or logging of trees, or the transport of timber by inland waters or the control or extinguishing of forest fires ; or
- (xx) employed in operations for the catching or hunting of wild animals ; or
- (xxi) employed in the handling or transport of goods in, or within the precincts of—
  - (a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed ; or
  - (b) any market in which on any one day of the preceding twelve months one hundred or more persons have been so employed ;
- (xxii) employed on the collection of fruits from trees exceeding twenty-five feet in height.



EXPLANATION.—In this Schedule, “the preceding twelve months” relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.

### SCHEDULE III.

(See section 3)

#### *List of occupational diseases.*

##### PART A.

Anthrax

Any employment—

(a) involving the handling of wool, hair, bristles, or animal carcasses, or the parts of such carcasses including hides, hoofs and horns ; or

(b) in connection with animals infected with Anthrax ; or

(c) involving the loading, unloading or transport of any merchandise.

Compressed air illness or its sequele. ... Any process carried on in compressed air.

Poisoning by lead tetra-ethyl ... Any process involving the use of lead tetra-ethyl.

Poisoning by nitrous fumes ... Any process involving exposure to nitrous fumes.

##### PART B.

Lead poisoning or its sequele, excluding poisoning by lead tetra-ethyl. ... Any process involving the use of lead or any of its preparations or compounds except lead tetra-ethyl.

Phosphorous poisoning or its sequele. ... Any process involving the use of phosphorous or its preparations or compounds.

Mercury poisoning or its sequele. ... Any process involving the use of mercury or its preparations or compound.

Poisoning by benzene and its homologues, or the sequele of such poisoning. ... Handling benzene or any of its homologues and any process in the manufacture or involving the use of benzene or any of its homologues.

Chrome ulceration or its sequele ... Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium, or their preparations.



Arsenical poisoning or its sequelae ...	Any process involving the production, liberation or utilisation of arsenic or its compounds.
Pathological manifestations due to—	Any process involving exposure to the action of
(a) radium and other radioactive substances,	radium, radio active substances or X-rays.
(b) X-rays.	
Primary epitheliomatous cancer of the skin.	Any process involving the handling or use of tar, pitch, bitumen mineral oil, paraffin, or the compounds, productse or residues of these substances.

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**Workmens' Compensation.****SCHEDULE IV.**

(See section 4)

*Compensation payable in certain cases.**Amount of compensation for*Half-monthly  
payment as  
compensationMonthly wages of  
the workman  
injured.Permanent for temporary  
Death of total disable-  
ment of  
adult. adult.disablement  
of adult.

I

2

3

4

More than. But not  
more than.

Rs.

Rs.

Rs.

Rs. as.  
Half his month-  
ly wages.

5

10

250

350

10

15

275

385

5

0

15

18

300

420

6

0

18

21

315

441

7

0

21

24

360

504

8

0

24

27

405

567

8

8

27

30

450

630

9

0

30

35

525

735

9

8

35

40

600

840

10

0

40

45

675

945

11

4

45

50

750

1,050

12

8

50

60

900

1,260

15

0

60

70

1,050

2,470

17

8

70

80

1,200

1,680

20

0

80

100

1,500

2,100

25

0

100

200

1,750

2,450

30

0

200

.....

2,000

2,800

30

0



# THE JAMMU AND KASHMIR LAND PRESERVATION ACT, 2000.

Act No. VIII of 2000.

## CONTENTS.

### *Preamble.*

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<i>Notification and Regulation of Areas.</i>	<i>Bar of Compensation for acts done under Sections 8, 9 and 10.</i>
3 Notification of Areas.	11. Bar of action.
4. Power to regulate, restrict or prohibit by general or special order within notified area certain matters.	<i>Power to enter upon and delimit Notified Area and Beds.</i>
5. Power in certain case to regulate, restrict or prohibit special order within notified areas, certain further matters.	12. Power to enter upon, survey and demarcate local areas notified under section 3 or 8.
6. Necessity for regulation, restriction or prohibition to be recited in the order under section 4 or 5. Publication of order.	<i>Inquiry into claims and award of compensation.</i>
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<i>Control over the Beds of Khuds and Nallahs.</i>	14. Method of awarding compensation and effect of such award
8. Action when Government considers it desirable to take measures to regulate the beds of Khuds and Nallahs. Vesting of such beds in the Government.	<i>Procedure, Records and Appeals.</i>
9. Effect of notification to suspend or extinguish private rights in the area notified under section 8.	15. Record of right in respect of notified areas.
	16. Mode of proclaiming notification and of serving notices, orders and processes issued under the Act.
	17. Appeal, review and revision.
	18. Penalty for offences.
	19. Bar of suits.
	20. Power to make rules.



# THE JAMMU AND KASHMIR LAND PRESERVATION ACT, 2000.

## Act No. VIII of 2000.

[Received assent of His Highness the Maharaja Bahadur on 2nd June 1943/20th Jeth 2000 and published in the Government Gazette dated 1st Bhadon 2000/17th August 1943.]

### An Act to provide for the better preservation and protection of certain portions of the territories of the Jammu and Kashmir State.

WHEREAS it is expedient to provide for the better preservation and protection of certain portions of the territories of the Jammu and Kashmir State situate within or adjacent to the mountain ranges or affected or liable to be affected by the debodisement of forests within those ranges, or by the action of streams and torrents, such as are commonly called *Khuds* and *Nallahs* flowing through or from them ;

Preamble.

It is hereby enacted as follows :—

1. (1) This Act may be called the Jammu and Kashmir Land Preservation Act, 2000.

Short title and extent.

- (2) It shall extend to the whole of the State.

2. In this Act, unless a different intention appears from the subject or context,—

Definitions.

(a) "Collector" includes any revenue officer, not lower in rank than an Assistant Collector of the first class specially appointed by the Government to perform the functions of a Collector under this Act ;

(b) "*Khud*" or "*Nallah*" means a stream or torrent flowing through or from mountain range ;

(c) "land" means land within any local area preserved and protected or otherwise dealt with in manner provided in this Act, and includes benefits to arise out of land and things attached to the earth or permanently fastened to any thing attached to the earth ;

(d) "person interested" includes all persons claiming any interest in compensation to be made on account of any measures taken under this Act ; and

(e) the words "tree", "timber", "forest produce" and "cattle" respectively, shall have the meanings severally assigned to them in the Jammu and Kashmir Forest Act, 1987.



## NOTIFICATION AND REGULATION OF AREAS.

**3.** Whenever it appears to the Government that it is desirable to provide for the better preservation and protection of any local area, situate within or adjacent to any mountain range or affected or liable to be affected by the debodisement of forests in that range or by the action of *Khuds* and *Nallahs* they may, by notification in the Government Gazette, make a direction accordingly.

**4.** In respect of areas notified under section 3 generally or the whole or any part of any such area, the Government may by general or special order, temporarily regulate, restrict or prohibit—

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of stone, or the burning of lime or the making of bricks at places, where such stone or lime or bricks had not ordinarily been so quarried or burnt or made prior to the publication of notification under section 3 ;

(c) the cutting of trees or timber, or the collection, removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce other than grass save for *bonafide* domestic or agricultural purposes ;

(d) the setting on fire of trees, timber or forest produce ;

(e) the admission, herding,, pasturing or retention of sheep and goats ;

(f) the examination of forest produce passing out of any such area ; and

(g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area to take any trees, timber or forest produce for their own use therefrom, or to pasture sheep or goats or to cultivate or erect buildings therein and the production and return of such permits by such persons.

**5.** In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3, the Government may by special order temporarily regulate, restrict or prohibit—



(a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of stone or the burning of lime or the making of bricks at places where such stone or lime or bricks had ordinarily been so quarried or burnt or made prior to the publication of the notification under section 3 ;

(c) the cutting of trees or timber, or the collection, removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce for any purposes ; and

(d) the admission, herding, pasturing or retention of cattle generally, other than sheep and goats, or of any class or description of such cattle.

EXPLANATION.—For the purposes of clause (b) of section 4 and clause (b) of this section, the word “making” includes “burning”.

6. Every order under section 4 or 5 shall be published in the Government Gazette and shall set forth that the Government are satisfied, after due inquiry and consideration, of objections as may have been preferred that the regulations, restrictions or prohibitions contained in the order are necessary for the purpose of giving effect to the provisions of this Act.

7. (1) When in respect of any local area a notification has been published under section 3 ; and

Proclamation of regulations, restrictions and prohibitions and admission of claims of compensation for rights which are restricted or extinguished.

(a) upon such publication any general order made under section 4 becomes applicable to such area ; or

(b) any special order under section 4 or section 5, is made in respect of such area,

the Collector shall cause public notice of the provisions of such general or special order to be given and, if the provisions of any such order restrict or prohibit the exercise of any existing rights, shall also publish in every town and village the boundaries of which include any portion of the area within or over which the exercise of any such rights is so restricted or prohibited a proclamation stating the regulations, restrictions and prohibitions which have been imposed, by any such order, within the limits of such area or in any part or parts thereof fixing a period of not less



than three months from the date of such proclamation and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount and particulars of the compensation, if any, claimed in respect thereof.

(2) Any claim not preferred within the time fixed in the proclamation made under sub-section (1) shall be rejected :

Provided that if the claimant satisfies the Collector that he had sufficient cause for not preferring the claim within time, the Collector may admit any such claim as if it had been made within such period.

#### CONTROL OVER THE BEDS OF KHUDS AND NALLAHS.

8. (1) Whenever after due enquiry and consideration of such objections as may be preferred it appears to the Government that it is desirable that measures should be taken in the bed of any *Khud* or *Nallah* for the purpose of—

Action when Government considers it desirable to take measures to regulate the beds of Khuds and Nallahs. Vesting of such beds in the Government.

(a) regulating the flow of water within and preventing the widening or extension of such bed, or of

(b) reclaiming or protecting any land situate within the limits of such bed,

they may either proceed at once in the manner provided in sub-section (2), or they may, in the first instance, issue a notification specifying the nature and extent of the measures which in their opinion are necessary, and the locality in, and the time within, which such measures are to be taken, requiring all owners and occupiers of land situate in such locality to carry out the measures specified in such notification.

(2) If the whole or any part of the bed of any *Khud* or *Nallah* be unclaimed, or, if in the opinion of the Government the measures deemed necessary under sub-section (1) are of such a character in regard to extent and cost that the interference of the Government is absolutely necessary, or in the event of the owner or occupier of any portion of the bed of any *Khud* or *Nallah* failing to comply with the requirements of any notification issued under sub-section (1), the Government may by notification declare that the whole or any part of the area comprised within



the limits of the bed of any *Khud* or *Nallah* shall vest in the Government for such period and subject to such conditions, if any, as may be specified in the notification, and may, from time to time, by like notification extend the period during which any such area shall remain vested in the Government :

Provided that no such declaration shall be made in respect of or shall affect any land included within the limits of the bed of any such *Khud* or *Nallah* which, at the date of the notification making such declaration, is cultivated and yields any produce of substantial value.

(3) When the owners or occupiers of such locality are unable to agree among themselves regarding the carrying out of such measures the decision of those paying the larger amount of land revenue shall be held to be binding on all.

9. Upon the making of any declaration under sub-section (2) of section 8 all private rights of whatever kind existing in or relating to any land comprised within the area specified in the notification containing such declaration at the time of the publication therefor shall be suspended for the period specified in the declaration and for such further period, if any, to which the notification may be extended :

Effect of notification to suspend or extinguish private rights in the area notified under section 8.

Provided that, as far as circumstances admit, such rights of way and water shall be reserved in respect of every such area, as may be necessary to meet the reasonable requirements and convenience of the persons, if any, who, at the time of the making of such declaration, possessed any such rights over such area.

10. (1) The Collector shall, for the purpose of every notification issued under sub-section (2) of section 8, fix the limits of the area comprised within the bed of the *Khud* or *Nallah* to which such notification is to apply.

Power of the Collector to delimit the bed and to decide what constitutes such bed. Power to take possession of bed when vested in the Government.

(2) Upon the publication of the notification containing any declaration under sub-section (2) of section 8, it shall be lawful for the Collector to—

(a) take possession of the area specified in such declaration ;

(b) eject all persons therefrom ; and

(c) deal with such area while it remains vested in the Government as if it were the absolute property of Government.



## BAR OF COMPENSATION FOR ACTS DONE UNDER SECTIONS 8, 9 AND 10.

**11.** No person shall be entitled to any compensation for anything at any time done in good faith in exercise of any power conferred by section 8, section 9 or section 10.

## POWER TO ENTER UPON AND DELIMIT NOTIFIED AREA AND BEDS.

**12.** It shall be lawful for the Collector and his subordinate officers, servants, caretakers and workmen from time to time, as occasion may require—

Power to enter upon, survey and demarcate local areas notified under section 3 or 8.

(a) to enter upon and survey any land comprised within any local area in regard to which any notification has been issued under section 3 or section 8;

(b) to erect bench-marks on and to delimit and demarcate the boundaries of any such local area; and

(c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to carry into effect all or any of the provisions of this Act:

Provided that reasonable compensation to be assessed and determined in the manner provided in this Act shall be made in respect of any damage or injury caused to the property or rights of any person in carrying out any operations under the provisions of this section, shall be payable in respect of any thing done.

## INQUIRY INTO CLAIMS AND AWARD OF COMPENSATION.

**13.** (1) The Collector shall—

Inquiries into claims and award thereupon.

(a) fix a date for inquiry into all claims made under sections 7 and 8 and may, in his discretion, from time to time, adjourn the inquiry to a date to be fixed by him;

(b) record in writing all statements;

(c) inquire into all claims duly preferred;

(d) make an award upon each such claim, setting out therein the nature and extent of the right claimed, the person or the persons making such claim, the extent, if any, to which, and the persons or person in whose favour, the right claimed is established, the extent to which it is



restricted or prohibited and the nature and amount of compensation if any awarded.

(2) For the purposes of every such enquiry the Collector may exercise all or any of the powers of a Civil Court in the trial of suits under the Code of Civil Procedure, 1977.

(3) The Collector shall announce his award to such persons interested or their representatives as are present and shall record the acceptance of those who accept it. To such as are not present the Collector shall cause immediate notice of his award to be given.

**14.** (1) In determining the amount of compensation and the taking over of possession the Collector shall be guided, so far as may be, by the provisions of sections 23, 24, 16 and 17 of the Jammu and Kashmir Land Acquisition Act, 1990 and as to matters which cannot be dealt with under those provisions by what is just and reasonable in the circumstances of each case.

(2) The Collector may with the sanction of the Government and the consent of the person entitled, instead of money, award compensation in land or by reduction in revenue or in any other form.

(3) In any case in which the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such right is so prohibited.

#### PROCEDURE, RECORDS AND APPEALS.

**15.** (1) For every area, notified under section 3, or section 8, the Collector shall prepare a record setting forth the nature, description, and extent of all rights mentioned in section 4 and section 5—

(a) existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8 ;

(b) regulated, restricted or prohibited by any order under section 4 or section 5.

(2) When any award is made under section 14, its effect upon such rights shall also be recorded therein.

**16.** (1) Upon the publication of a notification issued under any of the provisions of this Act, the Collector shall cause a public notice or the substance thereof to be given at convenient places to which such notification relates.

Method of awarding compensation and effect of such award.

Record of right in respect of notified areas.

Mode of proclaiming notification and of serving notices, orders and processes issued under the Act.



(2) The procedure prescribed in section 15-B, 15-C and 15-D of the Land Revenue Act, 1996, shall be followed, as far as may be, in proceedings under this Act.

**17.** Every order passed and every award made by the Collector under this Act, shall for the purposes of appeal, review and revision, respectively be deemed to be an order of the Collector within the meaning of section 11, 12, 13 and 14 of the Jammu and Kashmir Land Revenue Act, 1996 :

Provided that nothing in this Act shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded, as to the apportionment of distribution thereof amongst such persons or any of them.

**18.** Any person who within the limits of any local area notified under section 3 commits any breach of any regulation made or restrictions or prohibitions imposed under section 4 or section 5 shall be punished with fine which may extend to one hundred rupees or in default with imprisonment for a period not exceeding one month.

**19.** No suit shall lie against the Government for anything done under this Act and no suit shall lie against any public servant for any thing done or purporting to have been done by him, in good faith, or against any private individual for any thing done or purporting to have been done by him in good faith under the orders of any such public servant, under this Act.

**20.** (1) The Government may make rules consistent with this Act—

(a) regulating the procedure to be observed in any inquiry or proceeding under this Act ; and

(b) generally for the purpose of carrying into effect all or any of the provisions of this Act.

(2) All rules made under this section shall be published in the Government Gazette and on the expiry of thirty days from the date of such publication shall have the force of law.

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# THE LADAKH BUDHISTS SUCCESSION TO PROPERTY ACT, 2000.

Act No. XVIII of 2000.

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3. Right of all sons to succeed in equal shares.

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# THE LADAKH DUDHISTS SUCCESSION TO PROPERTY ACT, 2000.

Act No. XVIII of 2000.

[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000/and published in the Government Gazette dated 14th Magh 2000/27th January 1944.]

## An Act to define and amend in certain respects the law relating to succession to property of the Budhists of Ladakh.

Whereas it is expedient to define and amend in certain respects the law relating to succession to property of the Budhists of Ladakh; It is hereby enacted as follows :—

Preamble.

1. (i) This Act may be called the Ladakh Budhists Succession to Property Act, 2000.

Short title and extent.

(ii) It shall extend to the whole of Jammu and Kashmir State, but shall apply to the Budhists who have their domicile in Ladakh.

2. In this Act, unless there is anything repugnant in the subject or context :—

Definitions.

(a) "Budhist" means a person who professes the Buddhist faith or religion;

(b) "Ladakh" means the District of Ladakh.



3. On the death of a Buddhist his property where he leaves more than one son, shall, notwithstanding any law or custom to the contrary but subject to any valid disposition thereof which he may have made during his lifetime, be inherited by all his sons in equal shares :  
*Right of all sons to succeed in equal shares.*

Provided that sons, sons of pre-deceased sons, and sons of pre-deceased sons of pre-deceased sons, shall inherit *per stripes*, that is to say, the sons of a pre-deceased son shall take the share which would have been taken by him, and likewise the grandsons of a pre-deceased son shall take the share which their father would have taken.

4. The provisions of this Act shall not affect any right of succession accrued or any title to property acquired before the commencement of this Act.  
*Saving.*

## THE TRADE MARKS ACT, 2000.

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## THE TRADE MARKS ACT, 2000.

### Act No. XIX of 2000.

*[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000 and published in the Government Gazette dated 21st Magh 2000/3rd February 1944.]*

### An Act to provide for the Registration and more effective protection of Trade Marks.

#### CHAPTER I.

#### PRELIMINARY.

WHEREAS it is expedient to provide for the registration and more effective protection of trade marks ; It is hereby enacted as follows :—

Preamble.

1. (1) This Act may be called the Trade Marks Act,

Short title, extent and commencement 2000.

(2) It extends to the whole of Jammu and Kashmir State.

(3) This section and section 85 shall come into force at once ; the remaining provisions of the Act shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.



2. (I) In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) “associated trade marks” means trade marks deemed to be, or required to be registered as, associated trade marks under this Act ;

(b) “certification trade mark” means a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified and registrable as such under the provisions of Chapter VIII in respect of those goods in the name, as proprietor of the certification trade mark, of that person ;

(c) “District Court” has the meaning assigned to it in the Code of Civil Procedure, 1977 ;

(d) “High Court” means the High Court, as defined in section 48 of the Jammu and Kashmir Constitution Act, 1996 ;

(e) “limitations” (with its grammatical variations) means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded in within the State, or as to use in relation to goods to be exported to any market outside the State ;

(f) “mark” includes a device, brand, heading, label, ticket, name, signature, work, letter or numeral or any combination thereof ;

(g) “permitted use” means the use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject ;

(h) “prescribed” means prescribed by rules made, in relation to proceedings before the High Court, by the High Court, and in other cases, by the Government ;

(i) “registered” (with its grammatical variations) means registered under this Act ;

(j) “registered trade mark” means a trade mark which is actually on the register ;

(k) “registered user” means a person who is for the time being registered as such under section 41 ;

(l) “trade mark” means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to



indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person ;

(m) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfers, not being assignment ;

(n) "tribunal" means the Registrar or, as the case may be, the Court before which the proceeding concerned is pending.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references herein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in any other relation, whatsoever, to such goods.

3. The provisions of this Act shall be in addition to <sup>Application of other</sup> and not in derogation of, the provisions of <sup>laws not barred.</sup> any other law for the time being in force.

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## CHAPTER II.

### THE REGISTRAR AND CONDITIONS FOR REGISTRATION.

4. For the purposes of this Act there shall be established <sup>The Register of trade</sup> at the Patent Office a Trade Mark Registry, <sup>marks.</sup> and a record called the Register of Trade Marks (in this Act referred to as the register) shall be kept thereat wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed, but there shall not be entered in the register any notice of any trust express, implied or constructive nor shall any such notice be receivable by the Registrar.

(2) Subject to the superintendence and direction of the Government, the register shall be kept under the control and management of the Controller of Patents and Designs, who shall for the purposes of this Act be called the Registrar of Trade Marks (and is in this Act referred to as the Registrar).

(3) The register shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.



5. (1) A trade mark may be registered only in respect of particular goods or classes of goods.

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision in the matter shall be final.

6. (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely:—

(a) the name of a company, individual, or firm, represented in a special or particular manner ;

(b) the signature of the applicant for registration or some predecessor in his business ;

(c) one or more invented words ;

(d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India ;

(e) any other distinctive mark, provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.

(2) For the purposes of this section, the expression "distinctive" means adapted, in relation to the goods in respect of which a trade mark is proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from, goods in the case of which no such connection subsists, either generally or where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

(a) the trade mark is inherently so adapted to distinguish, and

(b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted to distinguish :

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to which registration is applied for, during a period from a date



prior to the 1st Baisakh 1996, to the date of application for registration, the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.

**7.** (1) A trade mark may be limited wholly or in part to one or more specified colours, and any such limitation shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

(2) So far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

**8.** No trade mark nor part of a trade mark shall be registered which consists of, or contains, any scandalous design, or any matter the use of which would—

(a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a court of justice ;

(b) be likely to hurt the religious susceptibilities of any class of His Highness' subjects ; or

(c) be contrary to any law for the time being in force or to morality.

**9.** No word which is commonly used and accepted name of any single chemical element or single chemical compound (as distinguished from a mixture) shall be registered as a trade mark in respect of a chemical substance or preparation, any such registration shall, notwithstanding anything in section 24, be deemed for the purposes of section 46 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require :

Provided that this section shall not apply to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

**10.** (1) Save as provided in sub-section (2), no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or which so



nearly resembles such trade mark as to be likely to deceive or cause confusion.

(2) In case of honest concurrent use or of other special circumstances which, in the opinion of Registrar, make it proper so to do he may permit the registration by more than one proprietor of trade marks which are identical or nearly resemble each other in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by a competent Court.

**11.** (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.

Registration of parts of trade marks and of trade marks as a series.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and have all the incidents of an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statements of the goods in relation to which they are respectively used or proposed to be used ; or

(b) statements of number, price, quality or names of places ; or

(c) other matters of a non-distinctive character which does not substantially affect the identity of the trade mark ; or

(d) colour ;

seeks to register those trade marks, they may be registered as a series in one registration.

**12.** (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

Associated trade marks.

(2) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 11, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be and shall be registered as, associated trade marks.



(3) All trade marks registered in accordance with the provisions of sub-section (3) of section II as a series in one registration shall be deemed to be and shall be registered as associated trade marks.

(4) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

Registration subject to disclaimer. **13.** If a trade mark contains—

(a) any part not separately registered as a trade mark in the name of the proprietor, or of the separate registration of which no application has been made, or

(b) any matter common to the trade, or otherwise of a non-distinctive character,

the tribunal, in deciding whether the trade mark shall be entered or shall remain on the register, may require as condition of its being on the register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled or make such other disclaimer as the tribunal may consider necessary for the purpose of defining the rights of the proprietor under the registration ;

Provided that no disclaimer shall affect any right of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

### CHAPTER III.

#### PROCEDURE FOR, AND DURATION OF, REGISTRATION.

**14.** (I) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it shall apply in writing to the Registrar in the prescribed manner, and subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

Application for registration.



(2) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat.

(3) The tribunal may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as it may think fit.

**15.** (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised, in the prescribed manner:

Provided that the Registrar may cause an application to be advertised before acceptance if it relates to a trade mark to which clause (e) of sub-section (1) of section 6 applies, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(3) The Registrar shall serve in the prescribed manner a copy of the notice on the applicant, and within the prescribed time the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement the Registrar shall serve in the prescribed manner a copy thereof on the person giving notice of opposition and shall, after hearing the parties, if so required, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice, or an appellant against any order of the Registrar under section 14 or this section, neither resides nor carries on business in the State, the tribunal may require him to give security for costs of the proceedings before it, and in



default of such security being duly given may treat the opposition or application or appeal, as the case may be, as abandoned.

**16.** (1) When an application for registration of a trade mark has been accepted and either has not been opposed and the time for notice of opposition has expired, or having been opposed, has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error, or unless the Government otherwise directs, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the making of the said application, and that date shall, subject to any direction made under section 83 applicable to such trade mark, be deemed for the purposes of this Act to be the date of registration.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

**17.** (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

(a) on behalf of both or all of them, or

(b) in relation to an article with which both or all of them are connected in the course of trade, those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

**18.** (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section.



(2) The Registrar, shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fifteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as "the expiration of the last registration").

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

**19.** Where a trade mark has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year next after the date of removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

(a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

## CHAPTER IV.

### EFFECT OF REGISTRATION.

**20.** (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for the infringement of an unregistered trade mark unless such trade mark has been continuously in use since before the 1st Baisakh 1996, by such person or by a predecessor in title of his and unless an application for its registration made within five years from the commencement of this Act, has been refused; and the Registrar shall, on application in the prescribed manner, grant a certificate that such application has been refused.

No action for infringement of unregistered trade marks.



(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

**21.** Subject to the provisions of sections 22, 25 and 26

Right conferred by registration. as proprietor of a trade mark in respect of

any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods and without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being used as a trade mark ; or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

**22.** (1) The right to the use of a trade mark given under

No infringement in certain circumstances. section 21 by registration shall be subject to any conditions or limitations entered on

the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark ; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the



use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(3) The use of a registered trade mark, being one of two or more registered trade marks which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

**23.** In all legal proceedings relating to a registered trade mark, the fact that a person is registered as proprietor thereof shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

**24.** In all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 8.

**25.** Nothing in this Act shall entitle the proprietor of a registered user of a registered trade mark to interfere with or restrain the use by person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his, or

(b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his, whichever is the earlier or to object (on such use being proved) to registration of that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section 10.

**26.** No registration of a trade mark shall interfere with any *bona fide* use by a person of his own name, address or description of goods, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, not being a description that would be



likely to be taken as importing any such reference as is mentioned in clause (b) of section 21 or in clause (b) of section 57.

**27.** (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any words which the trade mark contains or of which it consists as the name or description of an article or substance :

Words used as name or description of an article or substance.

Provided that, if it is proved either—

(a) that there is a well-known and established use of the said words as the name or description of the article or substance by a person carrying on a trade therein, not being used in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor ; or

(b) that the article or substance has been manufactured under a patent in force at or granted after the commencement of this section, that a period of two years or more after the expiry of the patent has elapsed, and that the said words are the only practicable name or description of the article or substance :—

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then

(a) for the purposes of any proceedings under section 46—

(i) if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed to be an entry wrongly remaining on the register ;

(ii) if the trade mark contains such words and other matter, the tribunal, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in the relation to that article or substance and any goods of the same description, of such words, provided that no disclaimer shall affect any rights of the proprietor of a trade mark



except such as arise out of the registration of the trade mark in respect of which the disclaimer is made ;

(b) for the purpose of any other legal proceedings relating to the trade mark—

(i) if the trade mark consists solely of such words all rights of the proprietor under this Act or any other law to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or

(ii) if the trade mark contains such words, in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in clause (a) of the proviso to sub-section (i) first became well known and established, or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

## CHAPTER V.

### ASSIGNMENT AND TRANSMISSION.

**28.** The person for the time being entered in the register as proprietor of a trade mark, shall subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

**29.** Notwithstanding anything in any other law to the contrary, a registered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not, and in respect either of all of the goods in respect of which it is registered or of some only of those goods.

**30.** An unregistered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not :

Provided that except in connection with the goodwill of a business assignment or transmission shall be permissible only, if—

(a) at the time of assignment or transmission of the



unregistered trade mark it is used in the same business as a registered trade mark, and

(b) the registered trade mark is assigned or transmitted at the same time and to the same person as the unregistered trade mark, and

(c) the unregistered trade mark relates to goods in respect of which the registered trade mark is assigned or transmitted.

**31.** (1) Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion :

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise trade in, within the State (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside the State.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or mis-representation be conclusive as to the validity or invalidity under sub section (1) of the assignment in so far as such, validity or invalidity depends, upon the facts set out in the case, but as regards, a certificate in favour of validity, only if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.



**32.** Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in any place in the State and an exclusive right in another of these persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in any other place in the State:

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claim that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 31 if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

**33.** Where an assignment in respect of any goods of a trade mark which is at the time of the assignment used in a business in those goods, is made after the commencement of this Act otherwise than in connection with the goodwill of that business, the assignment shall not take effect unless the assignee, not later than the expiration of six months, from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct,



**34.** (1) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Government, for which application shall be made in writing in the prescribed manner through the Registrar.

Conditions for assignment and transmission of certification trade marks and associated trade marks.

(2) Associated trade marks shall be assignable and transmissible only as a whole and not separately.

**35.** (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

Registration of assignments and transmission.

(2) Except for the purposes of an appeal against a decision of the Registrar under sub-section (1) or of an application under section 46, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1) shall not be admitted in evidence before any tribunal in proof of the title to a trade mark unless the tribunal otherwise directs.

## CHAPTER VI.

### USE OF TRADE MARKS AND REGISTERED USERS.

**36.** (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark, if the Registrar is satisfied that a company is about to be formed and registered under the Jammu and Kashmir Companies Act, 1997, and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods by the company.

Proposed use of trade mark by company to be formed.

(2) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods is registered in the name



of an applicant who relies on intention to assign to a company, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

**37.** (1) Subject to the provisions of section 38, a registered trade mark may be taken off the

Removal from register and imposition of limitations on ground of non-use.

register in respect of any of the goods in respect of which it is registered on application in the prescribed manner by any

person aggrieved to the High Court or to the Registrar, on the ground either—

(a) that the trade mark was registered without any *bona-fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 36 apply, by the company concerned, and that there has in fact been no *bona-fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application ; or

(b) that upto a date one month before the date of the application, a continuous period of five years or longer elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being :

Provided that, except where the applicant has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application made under clause (a) or clause (b) in relation to any goods, if it is shown that there has been before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold or otherwise traded



in, in particular place in the State (otherwise than for export from the State) or in relation to goods to be exported to a particular market outside the State, and

(b) a person has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be so sold, or otherwise traded in ; or in relation to goods to be so exported the tribunal is of opinion that he might properly be permitted so to register such a trade mark, on application by that person in the prescribed manner to the High Court or to the Registrar, that tribunal may impose on the registration of the first mentioned trade mark such limitations as it thinks proper for securing that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates.

**38.** (1) Where a trade mark consisting of any invented word has become so well-known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first mentioned goods then, notwithstanding that the proprietor registered in respect of the first mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 37 the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under the said section.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.



(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar the registration of a trade mark as a defensive trademark may be cancelled on the ground that the requirements of sub-section (1) are no longer satisfied in respect of any goods in relation to which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in relation to which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

**39.** (1) A person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark and either with or without conditions or restrictions).

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor for any purpose for which such use is material under this Act or any other law.

**40.** (1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within three months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making a proprietor a defendant.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any



costs unless he enters an appearance and takes part in the proceedings.

**41.** (1) Where it is proposed that a person should be registered as a registered user of a trade mark the proprietor and the proposed registered user shall make application in writing to the Registrar in the prescribed manner accompanied by an affidavit made by the proprietor or by some person authorised to the satisfaction of the Registrar to act on his behalf—

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restrictions as to persons for whose registration as registered users application may be made ;

(b) stating the goods in respect of which registration is proposed ;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods to the mode or place of permitted use, or to any other matter ;

(d) stating whether the permitted use is to be for a period or without limit of period and if for a period the direction thereof and by such further documents, information or evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, if the Registrar is satisfied that in all the circumstances the use of the trade mark in respect of the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar may think proper, would not be contrary to the public interest, the Registrar may register, subject as aforesaid, the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

(3) The Registrar shall refuse an application under this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(4) The Registrar shall, if so requested by an applicant, take steps for securing that information given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rival in trade.

(5) The Registrar shall issue notice in the prescribed manner—



(a) of the registration of a person as a registered user, to any other registered user, of the trade mark ;

(b) of an application under section 42, to the registered proprietor, and each registered user, (not being the applicant) of the trade mark.

**42.** Without prejudice to the provisions of section 46, the registration of a person as a registered user—

Power to Registrar to vary or cancel registration as registered user.

(a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark ;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark ;

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely :—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use or in such a way as to cause or to be likely to cause, deception or confusion ;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration ;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested ;

(d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

**43.** Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Registered user not to have right of assignment or transmission.

**44.** (1) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept use of a registered associated trade mark, Use of one of associated or substantially identical trade marks equivalent to use of another.



or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall, for the purposes of this Act be deemed to be also a use of any trade mark being a part thereof and registered in accordance with sub-section (1) of section 11 in the name of the same proprietor.

**45.** The application in the State of a trade mark to goods to be exported from the State and any other act done in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within the State would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purposes for which such use is material under this Act or any other law.

(2) The use of a registered trade mark in relation to goods between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods between which and the person using the mark or any predecessor in his business different form of connection in the course of trade subsisted or subsists.

## CHAPTER VII.

### RECTIFICATION AND CORRECTION OF THE REGISTER.

**46.** (1) On application in the prescribed manner by any person aggrieved to the High Court or to the Registrar, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention of, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar and the tribunal may make such order for making, expunging or varying the entry as it may think fit.



(3) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(4) The High Court or the Registrar, of its or his own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

**47.** (1) The Registrar may on application made in the prescribed manner by the registered proprietor,—

Correction of register.

(a) correct any error in the name, address or description of the registered proprietor of a trade mark ;

(b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark ;

(c) cancel the entry of a trade mark on the register ;

(d) strike out any goods or classes of goods from those in respect of which a trade mark is registered ;

(e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change in the name, address or description of the registered user.

**48.** (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

Alteration of registered trade mark.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties, if so required, decide the matter.

(3) Where leave is granted under this section, the trade



mark as altered shall be advertised in the prescribed manner unless the application has already been advertised under sub-section (2).

**49.** (1) The Registrar shall not, in exercise of any power conferred on him under clause (a) of sub-section (2) of section 84, make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made, or of antedating the registration of a trade mark in respect of any goods:

Provided that this sub-section shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition of antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be notified to the registered proprietor of the trade mark affected and advertised in the prescribed manner and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

## CHAPTER VIII.

### CERTIFICATION TRADE MARKS.

**50.** Subject to the provisions of this Chapter, the other provisions of this Act except sections 6, 21, 22, 31, 32, 33, 36, 37, 39, 40, 41, 42 and 43 and sub-section (2) of section 45 shall apply to certification trade marks as they apply to trade marks.

**51.** A mark shall not be registerable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified.

**52.** In determining whether a mark is adapted to distinguish in accordance with the provisions of clause (b) of sub-section (1) of section 2, the tribunal may have regard to the extent to which—

(a) the mark is inherently so adapted to distinguish in



relation to the goods in question ; and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact so adapted to distinguish in relation to the goods in question.

**53.** (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 56.

(2) The provisions of section 14 shall have effect in relation to an application under this section as they have effect in relation to an application under the said section, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant as if the application were an application under section 14 and to any other considerations (not being matters within the competence of the Government under section 54) relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

**54.** When authorisation to proceed with an application under section 53 has been given, the Registrar shall forward the application to the Government who shall consider the application with regard to the following matters, namely :—

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered ;

(b) whether the draft of the regulations to be deposited under section 56 is satisfactory ;

(c) whether in all the circumstances the registration applied for would be to the public advantage ; and may either—

(i) direct that the application shall not be accepted ; or

(ii) direct the Registrar to accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which it thinks requisite having regard to any of the said matters ; but, except in the case of a direction



for acceptance and approval without modification and unconditionally, the Government shall not decide the matter without giving to the applicant an opportunity of being heard :

Provided that the Government may, at the request of the applicant, made with the concurrence of the Registrar, consider the application with regard to any of the said matters before authorisation to proceed with the application has been given, so, however, that the Government shall be at liberty to reconsider any matter on which it has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft of the regulations.

**55.** (1) When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 15 shall have effect in relation to the registration of the mark as if the application had been an application under section 14 :

Provided that, in deciding under the said provisions the tribunal shall have regard only to the considerations referred to in sub-section (3) of section 53, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Government under sub-section (2) of this section of any opposition relating to any of the matters referred to in section 54, the Government shall, after hearing the parties, if so required, and considering any evidence, decide whether and subject to what conditions or limitations, or amendments or modifications, if any, of the application or of the regulations to be deposited under section 56, registration is, having regard to those matters to be permitted.

**56.** (1) There shall be deposited at the Patent Office in respect of every mark registered as a certification trade mark regulations approved by the Government for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the certification trade mark, and may contain any other provisions which the Government may by general or special order require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulation) ; and regulations so

Deposit of regulations governing the use of a certification trade mark.



deposited shall be open to inspection in like manner as the register.

(2) The regulations so deposited may on the application of the registered proprietor be altered by the Registrar with the consent of the Government.

(3) The Government may cause such application to be advertised in any case where it appears to it expedient so to do, and where it does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Government shall not decide the matter without giving the parties an opportunity of being heard.

**57.** Subject to the provisions of sections 25, 26 and 58, Right conferred on the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the certification trade mark in relation to those goods, and, without prejudice to the generality of the foregoing provision that right shall be deemed to be infringed by any person who, not being the proprietor of the mark or a person authorised by him in that behalf under the regulations deposited under section 56, using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either ;

(a) as being use as a certification trade mark, or

(b) to import a reference to some person having the right either as proprietor, or by his authorisation under the said regulations, to use the mark, or to goods certified by the proprietor.

**58.** (1) The right to the use of a certification trade mark No infringement in given under section 57 by registration certain circumstances. shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode in relation to goods to be sold or otherwise traded in any place, in relation to goods to be exported to any market, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a certification trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods certified by the proprietor of the mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation



under the relevant regulations has applied the mark and has not consequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark, or

(b) in relation to goods adapted to form part of, or to be accessory to other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor :

Provided that clause (a) shall not apply to the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that clause if such application is contrary to the said regulations.

(3) Where a certification trade mark is one of two or more registered certification trade marks which are identical or nearly resemble each other the use of any of those marks in exercise of the right to the use of that mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those marks.

**59.** (1) The Government may, on the application in the prescribed manner of any person aggrieved or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation, make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds, namely :—

(a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the mark is registered to certify those goods ;

(b) that the proprietor has failed to observe any provision of the deposited regulations to be observed on his part ;

(c) that it is no longer to the public advantage that the mark should be registered ;

(d) that it is requisite for the public advantage that, if the mark remains registered, the regulations should be varied ; and neither the High Court nor the Registrar shall have any jurisdiction to make an order under section 46 on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for



giving effect to any order made under sub-section (1).

**60.** The Registrar shall have no power to award costs to  
Cost not to be awarded or against any party on an appeal to him in certain cases.  
 against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the mark.

**61.** Save as otherwise expressly provided in this Chapter,  
Decision of the Government to be final. every decision of the Government under this Chapter shall be final.

## CHAPTER IX.

### SPECIAL PROVISIONS FOR TEXTILE GOODS.

**62.** The Government shall prescribe classes of goods (in  
Textile goods. this Chapter referred to as textile goods)  
 to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

**63.** (1) There shall be kept for the purposes of this Act a  
Textile Marks Record. record called the Textile Marks Record wherein shall be entered copies of all entries in the register relating to trade marks registered in respect of textile goods and the said record shall at all convenient times be open to the inspection of the public subject to such conditions and restrictions as may be prescribed.

(2) Trade marks in respect of textile goods of which registration has been refused shall be entered in a list called the Refused Textile Marks List, a copy of which shall be kept at the registered office, and the list and the said copy shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

Restriction on registration of textile goods. **64.** In respect of textile goods being piece-goods—

(a) no mark consisting of a line heading alone shall be registrable as a trade mark;

(b) a line heading shall not be deemed to be adapted to distinguish;

(c) the registration of a trade mark shall not give any exclusive right to the use of a line heading.

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be



subject to such conditions and restrictions as may be prescribed.

**65.** (1). Applications for the registration of a trade mark in respect of textile goods shall be made to the Registrar.

Registration.

**66.** (1) The Government may in the prescribed manner constitute one or more Advisory Committees of persons versed in the usages of the textile trade for the purpose of this section.

Advisory Committee.

(2) The Registrar shall consult any such Committee with respect to any circumstances peculiar to the textile trade arising on an application to register a trade mark in respect of textile goods.

(3) The place of meeting and the conduct of business of such Committees shall be determined by rules made under this Act.

## CHAPTER X.

### OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

**67.** If any person makes, or cause to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsification of entries in register.

**68.** (1) From such date, not being earlier than one year from the commencement of this Act, as the Government may, by notification in the Government Gazette appoint in this behalf no person shall make any representation—

Penalty for falsely representing a trade mark as registered.

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark ; or

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark ; or

(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered ; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances



in which, having regard to limitations entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) For the purposes of this section, the use in State in relation to a trade mark of the word 'registered' or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register except—

(a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside State being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside the State in relation solely to goods to be exported to that country.

**69.** If a person without due authority, uses in connection with any trade, business, calling or profession—  
Restraint of use of  
 Royal Arms and State  
 emblems.

(a) the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or

(b) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with His Highness' Government, he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title of the Registrar, be restrained by injunction from continuing so to use the same.

## CHAPTER XI.

### MISCELLANEOUS.

Procedure  
 Registrar. before the

**70.** In all proceedings under this Act before the Registrar—



(a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witness, compelling the discovery and production of documents and issuing commissions for the examination of witness ;

(b) evidence shall be given by affidavit provided that the Registrar may, if he thinks fit take oral evidence in lieu of, or in addition to, such evidence by affidavit ;

(c) the Registrar shall not exercise any power vested in him by this Act or the rules made thereunder adversely to any party duly appearing before him without (if required in writing within the prescribed time so to do) giving such party an opportunity of being heard ;

(d) the Registrar may, save as otherwise expressly provided in this Act, and subject to any rules made in this behalf under section 84, make such orders as to costs as he considers reasonable and any such order shall be executable as a decree of a Civil Court.

**71.** In all proceedings under this Act before the Government, evidence shall be given by affidavit, provided that the Government may, if it thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit, and shall for that purpose have all the powers of a Civil Court referred to in clause (a) of section 70.

**72.** Where under this Act an applicant has the option of making an application either to the High Court or to Registrar :—

Procedure in certain cases of option to apply to the High Court or Registrar.

(a) if any suit or other proceedings concerning the trade mark in question is pending before the High Court or a District Court, the application shall be made to the High Court ;

(b) if in any other case the application is made to the Registrar, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the High Court.

**73.** No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

Suits for infringement to be instituted before District Court.

**74.** (1) In any suit or other legal proceedings in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the tribunal.

Appearance of Registrar in proceedings involving rectification of register.



(2) Unless the tribunal otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue, or of the grounds of any decision given by him affecting it, or of the practice of the Patent Office in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the suit of other proceedings.

(3) The costs of the Registrar shall be in the discretion of the tribunal but the Registrar shall not be ordered to pay the costs of any of the parties.

**75.** (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts in the State and in all proceedings without further proof of production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or thing having been done or not done.

**76.** (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Government, from any decision of the Registrar under this Act or the rule made thereunder to the High Court :

Provided that if any suit or other proceeding concerning the trade mark in question is pending before the High Court or a District Court, the appeal shall be made to the High Court.

(2) In an appeal by an applicant for registration against a decision of the Registrar under section 13 or section 14 or section 15, it shall not be open save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be ; and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

(3) Subject to the provisions of this Act and of rules made thereunder the provisions of the Code of Civil Procedure shall apply to appeals before the High Court under this Act.



**77.** The High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

Power to the High Court to make rules.

**78.** If in any legal proceeding in which the validity of the registration of a trade mark comes into question, a question, given in favour of the proprietor of the trade mark, the tribunal may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full costs, charges and expenses as between legal practitioner and client.

Certificate of validity.

**79.** In any suit or other proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or get up legitimately used by other persons.

Trade usage, etc. to be taken into consideration

**80.** Where by or under this Act, any act, other than the making of an affidavit, is required to be done by any person, the act may, subject to prescribed conditions or in special cases with the consent of the Government, be done, in lieu of by that person himself, by a duly authorised agent, being either a legal practitioner or a person registered in the prescribed manner as trade marks agent.

Agents.

**81.** There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by the Government.

Fees.

**82.** The provisions of this Act shall be binding on the Government.

Government to be bound.

**83.** If at any time after the expiry of six months from the commencement of this section, it is made to appear to the Government that any Government outside the State has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in the State, the Government may, by notification in the Government Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in the State under this Act.

Power to make reciprocal arrangements with other Governments.



on his making an application for registration in the State within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade-mark at the date at which the application for registration was made within the territories of that Government.

**84.** (1) The Government may, subject to the condition of previous publication by notification in the Government Gazette, make rules to carry out the purposes of this Act.

Power of the Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may —

(a) prescribe the classification of goods for the purpose of the registration of trade mark; and empower the Registrar to amend the register so far as may be necessary for the purpose of adapting the entries therein to any amended or substituted classification which may be prescribed;

(b) require the making of duplicates of trade marks and other documents connected therewith;

(c) provide for securing and regulating the publication, sale or distribution of copies of trade marks and other documents connected therewith;

(d) prescribe additional matters to be entered in the register;

(e) prescribe the conditions and restrictions subject to which the register, the Textile Marks Record and the Refused Textile Marks List may be inspected;

(f) prescribe the form of certificates of registration;

(g) prescribe the conditions under which a trade mark removed from the register may be restored under sub-section (3) of section 18;

(h) prescribe the further documents, information or evidence to accompany an application under sub-section (1) of section 41;

(i) prescribe classes of goods as textile goods for the purposes of Chapter IX;

(j) provide for the constitution of Advisory Committees referred to in section 66, and prescribe the places of meeting, and conduct of business at meetings, of such Committees;

(k) regulate the awarding of costs by the Registrar under section 70;

(l) prescribe the conditions subject to which an agent referred to in section 80 may act;

(m) prescribe the fees to be paid under this Act;

(n) provide for the establishment of branches of the Trade Marks Registry when expedient for facilitating the



working of this Act, and authorities the preparation of copies of the register to be kept at such branch offices ;

(o) prescribe the manner in which, in proceedings under this Act, before the Government or the Registrar, applications shall be made, notices given and matters advertised ;

(p) prescribe times or periods required by this Act to be prescribed ;

(q) provide, generally for regulating the business of the Trade Marks Registry and of branches established under clause (n) or under section 6 }, and for regulating all things by this Act placed under the direction or control of the Government or the Registrar.

**85.** The Government may, by notification in the Government Gazette, provide such procedure as it considers expedient to enable intending applicants to deposit trade marks at the Patent Office before the coming into force of the remaining provisions of this Act :

Power to Government to make provision for applications for registration before the coming into force of the remaining provisions of Act.

Act :

Provided that the deposit of a trade mark under this section shall not affect any right, existing or accruing in the trade mark.

## THE JAMMU AND KASHMIR DRUGS ACT, 2000.

### Act No. XX of 2000.

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**THE JAMMU AND KASHMR DRUGS ACT, 2000.****Act No. XX of 2000.**

[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Maghar 2000/and published in the Government Gazette dated 21st Magh 2000 3rd/February 1944.]

**An Act to regulate the import, manufacture, distribution and sale of drugs.**

WHEREAS it is expedient to regulate the import into, and the manufacture, distribution and sale in the State of drugs; it is hereby enacted as follows :—

Preamble



## CHAPTER I.

## INTRODUCTORY.

1. (1) This Act may be called the Jammu and Kashmir  
Short title, extent and commencement. Drugs Act, 2000.

(2) It extends to the whole of the Jammu and Kashmir State.

(3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.

2. The provisions of this Act shall be in addition to, and  
Application of other laws not barred. not in derogation of, the Dangerous Drug Rules, made under the Jammu and Kashmir Excise Act, 1958, and any other law for the time being in force.

3. In this Act, unless there is anything repugnant in the subject or context—  
Definitions.

(a) "the Board" means the Drugs Advisory Board constituted under section 5 ;

(b) "drug" includes all medicines for internal or external use of human beings or animals, and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals, other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine ;

(c) "to import" with its grammatical variations and cognate expressions, means to bring into the State ;

(d) "patent or proprietary medicine" means a drug which is a remedy or prescription prepared for internal or external use of human beings or animals, and which is not for the time being recognised by the permanent Commission on Biological Standardisation of the League of Nations or in the latest edition of the British Pharmacopoeia or the British Pharmaceutical Codex or any other Pharmacopoeia authorised in this behalf by the Government after consultation with the Board ;

(e) "prescribed" means prescribed by rules made under Chapter II or Chapter IV by the Government.

4. Any substance specified as poisonous by rules made  
Presumption as to poisonous substances. under Chapter IV shall be deemed to be a poisonous substance for the purposes of Chapter III or Chapter IV, as the case may be.



## CHAPTER II.

## THE DRUGS ADVISORY BOARD AND THE DRUG LABORATORY.

5. (1) The Government shall, as soon as may be possible constitute a Board (to be called the Drugs Advisory Board) to advise the Government on technical matters arising out of the administration of this Act and to carry out the other functions assigned to it by this Act.

(2) The Board shall consist of the following members, namely :—

- (i) the Director of Medical Services *ex-officio*, who shall be Chairman ;
- (ii) the Director or Pharmacologist of the Drug Research Laboratory ;
- (iii) one of the Deputy Directors Medical Services, to be nominated by the Director of Medical Services ;
- (iv) the Chemical Examiner ;
- (v) the Superintendent of Jammu or Srinagar Hospital ;
- (vi) two private medical practitioners, one to be elected by the Medical Association Jammu and one by the Medical Association Kashmir.
- (vii) two persons of the pharmaceutical profession to be nominated by the Government, one from the Jammu Province and one from the Kashmir Province.

(3) The nominated and elected members of the Board shall hold office for three years, but shall be eligible for re-nomination or re-election.

(4) The Board may, subject to the previous approval of the Government, make bye-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods, not exceeding three years, as it may decide, or temporarily for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Government shall appoint a person to be Secretary of the Board and shall provide the Board with such clerical and other staffs as the Government consider necessary.



6. (1) The Government shall direct the Drug Research Laboratory to carry out the functions entrusted to it by this Act or any rules made under this Chapter.

(2) The Government may after consultation with the Board, make rules prescribing—

- (a) the functions of the Drug Research Laboratory ;
- (b) the procedure for the grant of certificates of registration under this Act by the said Laboratory in respect of patent or proprietary medicines not having displayed on the label or container thereof the true formula of list of ingredients contained therein in a manner readily in forms of such certificates and the fees payable therefor ;
- (c) the procedure for preserving the secrecy of the formulae of patent or proprietary medicines when disclosed to the said Laboratory under this Act ;
- (d) the procedure for the submission to said Laboratory under Chapter IV of samples of drugs for analysis or test, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports ; and
- (e) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

### CHAPTER III.

#### IMPORT OF DRUGS.

7. (1) For the purposes of this Chapter and Chapter IV, the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

(2) The Government, after consultation with the Board and after giving, by notification in the Government Gazette not less than three months' notice of their intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter and Chapter IV, thereupon the Schedule shall be deemed to be amended accordingly.

8. For the purposes of this Chapter and Chapter IV, a drug shall be deemed to be misbranded—

- (a) if it is an imitation of, or substitute for or resembles



in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or

- (b) if it purports to be the product of a place or country of which it is not truly a product ; or
- (c) if it is imported under a name which belongs to another drug ; or
- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or
- (e) if it is made to appear of better or greater therapeutic value than it really is ; or
- (f) if it is not labelled in the prescribed manner ; or
- (g) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular ; or
- (h) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

9. From such date as may be fixed by the Government

Prohibition of import  
of certain drugs.

by notification in the Government Gazette in this behalf, no person shall import :—

- (a) any drug which is not of standard quality ;
- (b) any misbranded drug ;
- (c) any drug for the import of which a licence is prescribed, otherwise than under, and in accordance with such licence ;
- (d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted in the prescribed manner in respect of such medicine by the Drug Research Laboratory after being correctly informed of the formula of such medicine ;
- (e) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed ;



Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis or for personal use :

Provided further that the Government may after consultation with the Board, by notification in the Government Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in clause (d) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

**10.** The law for the time being in force relating to Customs and to goods, the import of which is prohibited by an order made by the Government under section 25 of the Jammu and Kashmir Customs Act, 1958 shall, subject to the provisions of section 11 of this Act, apply in respect of drugs the import of which is prohibited under this Chapter, and officers of Customs and Officers empowered under that Act to perform the duties imposed thereby on the Inspector General of Customs and Excise and other officers of Customs shall have the same powers in respect of such drugs as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of section 1, the Inspector General of Customs and Excise, or any officer authorised by the Government in this behalf, may detain any imported package which he suspects to contain any drug the import of which is prohibited under this Chapter, and shall forthwith report such detention to the Director of the Drug Research Laboratory and if required by him, forward the package or samples of any suspected drug found therein to the said Laboratory.

**11.** (1) Whoever contravenes any of the provisions of this Chapter shall, in addition to any penalty to which he may be liable under the provisions of section 10, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees or with both.

(2) Whoever, having been convicted under sub-section (1),



is again convicted under that sub-section shall, in addition to any penalty as aforesaid, be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

**12.** Where any offence punishable under section II has been committed the consignment of the drug in respect of which the offence has been committed shall be liable to confiscation.

**13.** No Court inferior to that of a Magistrate of the first class shall try an offence punishable under section II.

## CHAPTER IV.

### MANUFACTURE, SALE AND DISTRIBUTION OF DRUGS.

**14.** From such date as may be fixed by the Government by notification in the Government Gazette in this behalf, no person shall himself or by any other person on his behalf :—

(a) manufacture for sale, or sell or stock or exhibit for sale or distribute—

- (i) any drug which is not of standard quality ;
- (ii) any misbranded drug ;
- (iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of certificate of registration granted, in the manner prescribed by the Government in respect of such medicine by the Drug Research Laboratory after being correctly informed of the formula of such medicine ;
- (iv) any drug which by means of any statement, design or device accompanying it or by any other means purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed ;
- (v) any drug, in contravention of any of the provisions of this Chapter or any rule made thereunder ;

(b) sell, or stock or exhibit for sale, or distribute any drug which has been imported or manufactured in



contravention of any of the provisions of this Act or any rule made thereunder ;

(c) manufacture for sale, or sell or stock or exhibit for sale, or distribute any drug, except under, and in accordance with the condition of a licence issued for such purpose under this Chapter :

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions of small quantities of any drug for the purposes of examination, test or analysis :

Provided further that the Government may, after consultation with the Board, by notification in the Government Gazette, permit subject to any conditions specified in the notification the manufacture for sale or distribution of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in sub-clause (iii) of clause (a) shall be deemed to be true and a sufficient compliance with that sub-clause if without disclosing a full and detailed recipe of the ingredients it indicates correctly all the potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

**15.** (1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug in respect of which the offence has been committed or of the circumstances of its manufacture or import or that a purchaser having bought only for the purpose of test or analysis has not been prejudiced by the sale.

(2) For the purposes of section 14 a drug shall not be deemed to be misbranded or to be below standard quality only by reason of the fact that :—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug or to conceal its inferior quality or other defects ; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it ; provided that this clause shall not apply in relation to any sale or distribution of the drug occurring after the vendor or distributor became aware of such intermixture.

(3) A person not being the manufacturer of a drug or



his agent for the distribution thereof, shall not be liable for a contravention of section 14 if he proves:—

(a) that he did not know, and could not with reasonable diligence have ascertained, that the drug in any way contravened the provision of that section and that the drug while in his possession remained in the same state as when he acquired it; or

(b) that he acquired the drug from a person resident in the State under a written warranty in the prescribed form and signed by such person that the drug does not in any way contravene the provisions of section 14, and that the drug while in his possession remained in the same state as when he acquired it:

Provided that a defence under clause (b) shall be open to a person only—

(i) if he has, within seven days of the service on him of the summons, sent to the Inspector a copy of the warranty with a written notice stating that he intends to rely upon it and giving the name and address of the warrantor and

(ii) if he proves that he has within the same period, sent written notice of such intention to the said warrantor.

**16.** The Government may, by notification in the Government Gazette, appoint such persons as they think fit, having the prescribed qualifications, to be Government Analysts for such areas and in respect of such drugs or classes of drugs as may be specified in the notification.

**17.** (1) The Government may, by notification in the Government Gazette, appoint such persons as they think fit, having the prescribed qualifications, to be Inspectors for the purposes of this Chapter within such local limits as the Government may assign to them respectively:

Provided that no person who has any financial interest in the manufacture, import or sale of drugs shall be appointed to be an Inspector under this sub-section.

(2) Every Inspector shall be deemed to be a public servant within the meaning of the Ranbir Penal Code and shall be officially subordinate to such authority as the Government may specify in his behalf.

**18.** Subject to the provisions of section 19 and of any rules made by the Government in this behalf, an Inspector may within the local limits for which he is appointed—

(a) inspect any premises wherein any drug is being manufactured and in the case of sera, vaccines and any other



drug prescribed in this behalf the plant and process of manufacture and the means employed for standardizing and testing the drugs ;

(b) take samples of any drug which is being manufactured, or being sold or is stocked or exhibited for sale, or is being distributed ;

(c) where he has reason to believe that any drug which is being manufactured for sale, or being sold or is stocked or exhibited for sale, or is being distributed, contravenes any of the provisions of section 14, order in writing the persons, in whose possession such drug may be not to dispose of any stock of such drug for specified period not exceeding 10 days or, unless the alleged contravention is such that the defect may be removed by the possessor of the drug, seize the stock of such drug ; Provided that the Inspector shall not take any action under this clause unless he has reported the facts to the District Magistrate, or the Additional District Magistrate or the Sub-Divisional Magistrate and has been authorised by him to take such action ;

(d) for any of the aforesaid purposes enter at all reasonable times with such assistants, if any, as he considers necessary, any premises wherein any drug is being manufactured or being sold or is stocked or exhibited for sale, or is kept for distribution ;

(e) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

**19.** (1) Where an Inspector takes any sample of a drug under this Chapter, he shall tender its fair price and may require a written acknowledgement therefor.

(2) Where the price tendered under sub-section (1) is refused ; or where the Inspector seizes the stock of any drug under clause (c) of section 18, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked :

Provided that where the sample is taken from premises whereon the drug is being manufactured, it shall be necessary to divide the sample into three portions only :



Provided further that where the drug is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second he shall produce in the Court before which proceedings, if any, are instituted in respect of the drug; and

(iii) the third, where taken, he shall send to the warrantor, if any, named under the proviso to sub-section (3) of section 15.

(5) Where an Inspector takes any action under clause (c) of section 18:—

(a) he shall use all despatch in ascertaining whether or not the drug contravenes any of the provisions of section 14 and, if it is ascertained that the drug does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the drug, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

**20.** Every person for the time being in charge of any premises whereon any drug is being manufactured or is kept for sale or distribution shall, on being required by an Inspector so to do, be legally bound to disclose to the Inspector the place where the drug is being manufactured or is kept, as the case may be.

**21.** (1) The Government Analyst to whom a sample of any drug has been submitted for test or analysis under sub-section (4) of section 19, shall deliver to the Inspector submitting it a signed

Persons bound to disclose place where drugs are manufactured or kept.

Reports of Government Analysts.



report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the warrantor, if any, named under the proviso to sub-section 3 of section 15 and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein and such evidence shall be conclusive unless the person from whom, the sample was taken or the said warrantor, has within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

(4) Unless the sample has already been tested or analysed in the Drug Research Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contravention of a Government Analyst's report the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug produced before the Magistrate under sub-section (4) of section 19 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of the Director of Drug Research Laboratory the result thereof and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Drug Research Laboratory under sub-section (4) shall be paid by the complainant or the accused as the Court shall direct.

**22.** A person shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug purchased by him and to receive a report of such test or analysis signed by the Government Analyst.

**23.** Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale, or distributes any drug in contravention of any of the provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalty for manufacture, sale etc. of drugs in contravention of this Chapter.

Purchase of drug for test or analysis.



**24.** Whoever, in respect of any drug sold by him whether as principal or agent, gives to the purchaser a false warranty that the drug does not in any way contravene the provisions of section 14 shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalties for giving false warranty or misuse of warranty.

(2) Whoever applies or permits to be applied to any drug sold, or stocked or exhibited for sale, by him, whether on the container or label or in any other manner, a warranty given in respect of any other drug shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

**25.** Whoever uses any report of a test or analysis made by the Drug Research Laboratory or by a Government Analyst, or any extract from such report for the purpose of advertising any drug shall be punishable with fine which may extend to five hundred rupees.

Penalty for use of Government Analyst's report for advertising.

**26.** Whoever, having been convicted of any offence under section 23 or section 24 or section 25, is again convicted of an offence under the same section shall be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees or with both.

Penalty for subsequent offences.

**27.** Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rules made in this behalf, the stock of the drug in respect of which the contravention has been made shall be liable to confiscation.

Confiscation

**28.** (1) No prosecution under this Chapter shall be instituted except by an Inspector.

Cognizance of offences

(2) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Chapter.

**29.** The Government may, after consultation with the Board and after previous publication by notification in the Government Gazette,

Power to make rule



make rules for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may —

(a) provide for the establishment of laboratories for testing and analysing drugs ;

(b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors ;

(c) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality ;

(d) prescribe in respect of biological and organometallic compounds, the units or method of standardization ;

(e) prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of drugs, or any specified drug or class of drugs, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor ;

(f) specify the diseases or ailments which a drug may not purport or claim to cure or mitigate and such other effects which a drug may not purport or claim to have ;

(g) prescribe the conditions subject to which small quantities of drugs may be manufactured for the purpose of examination, test or analysis ;

(h) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified drug or class of drugs and prohibit the sale, stocking or exhibition for sale, or distribution of the said drug or class of drugs after the expiry of a specified period from the date of manufacture or after the expiry of the date of potency ;

(i) prescribe the conditions to be observed in the packing in bottles, packages and other containers of drugs, and prohibit the sale, stocking or exhibition for sale, or distribution of drugs packed in contravention of such conditions ;

(j) regulate the mode of labelling packed drugs and prescribe the matters which shall or shall not be included in such labels ;

(k) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any drug, prohibit the manufacture, sale or stocking or exhibition for sale or distribution of any drug in which that proportion is exceeded, and specified substances which shall be deemed to be poisonous for the purposes of this Act and the rules made thereunder ;



(l) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any patent or proprietary medicine containing such drug ;

(m) prescribe the form of warranty referred to in subsection (a) (b) of section 15 ;

(n) regulate the powers and duties of Inspectors ;

(o) prescribe the form of report to be given by Government Analysts, and the manner of application for test or analysis under section 22 and the fees payable therefor ;

(p) specify the offences against this Chapter or any rule made thereunder in relation to which the stock of the drug shall be liable to confiscation under section 27 ;

(q) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Act or the rules made thereunder of any specified drug or class of drugs.

**30.** No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Protection to persons acting under this Act.

#### THE SCHEDULE.

(See section 7)

*Standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale or distributed.*

Class of drugs.

Standard to be complied with.

1. Patent of proprietary medicines.

The formula or list of ingredients displayed in the prescribed manner on the label or container, or the formula disclosed or to the Drug Research Laboratory, as the case may be.

2. Substances commonly known as vaccines sera, toxins exoids, anti-toxins and antigens and biological products of such nature.

The standards maintained at the National Institute and Medical Research, London and such further standards of strength, quality and purity as may be prescribed.



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- |   |  |
|---|--|
| 4. Vitamins, hormones and analogous products. | The standards maintained at the National Institute for Medical Research, London and such further standards of strength, quality and purity as may be prescribed.   |
| 4. Other drugs                                | ... The standard of identity, purity and strength specified in the latest edition of the British Pharmacopeia or the British Pharmaceutical Codex or any other prescribed pharmacopeia, or adopted by the Permanent Commission on Biological Standardisation of the League of Nations. |

## THE JAMMU AND KASHMIR VENEREAL DISEASES ACT, 2000.

**Act No. XXI of 2000.**

### CONTENTS.

*Preamble.*

**Section.**

**SECTION.**

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|---|--|
| 1. Short title, extent and commencement.  | 7. Facilities for diagnosis and treatment of venereal diseases.  |
| 2. Definitions.   | 8. Scientific report.  |
| 3. Duty of person suffering from a venereal disease to have his name etc. registered.               | 9. Secrecy of information.                                       |
| 4. Maintenance of a register.   | 10. Penalty.   |
| 5. Duty of Medical Practitioner.  | 11. Power to make rules.   |
| 6. Duty of person suffering from a venereal disease to offer for examination and undergo treatment. | 12. Prosecution for offences under sections 3 and 6 of this Act. |
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# THE JAMMU AND KASHMIR VENEREAL DISEASES ACT, 2000.

Act No. XXI of 2000.

*[Received assent of His Highness the Maharaja Bahadur on 26th November 1943/11th Magher 2000 and published in the Government Gazette dated 21st Magh 2000/3rd February 1944.]*

## An Act to provide for the Registration of persons suffering from venereal diseases and their treatment.

WHEREAS it is expedient to provide for the registration of persons suffering from venereal diseases and their treatment; It is hereby enacted as follows:—

**1.** (i) This Act may be called the Jammu and Kashmir Venereal Diseases Act, 2000.

Short title, extent and commencement.

(ii) It extends to the District of Udhampur and the Tehsils of Basohli and Reasi of Kathua and Reasi Districts respectively.

The Government may, by notification in the Government Gazette, extend it to the whole or any specified part of the State.

(iii) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint in this behalf.

**2.** Unless there is anything repugnant in the subject or context:—

Definitions.

(i) "venereal disease" includes syphilis, gonorrhoea, chandroid, granuloma venereum;

(ii) "Government dispensary" includes a Government hospital or a centre opened by the Government for the purpose of diagnosis and treatment of persons suffering from venereal diseases;

(iii) "Medical Officer" means the Medical Officer-in-charge of a Government dispensary;

(iv) "prescribed" means prescribed by rules made under this Act.

**3.** Every person knowing that he is suffering from

Duty of person suffering from a venereal disease to have his name etc. registered.

Act.

a venereal disease shall have his name and other prescribed particulars registered in the manner indicated in section 4 of the



4. Every Medical Officer shall maintain a register in the prescribed form and shall enter or cause to be entered therein the names and other prescribed particulars of persons suffering from a venereal disease and ordinarily residing within his jurisdiction.

5. Every medical practitioner including a Hakim or a Vaid who in the course of his professional duty or otherwise comes to know that any person is suffering from a venereal disease, shall forthwith report the name and such other particulars of such person as are within his knowledge to the Medical Officer within whose jurisdiction such person ordinarily resides.

6. Every person suffering from a venereal disease shall offer himself for examination for the purposes of diagnosis and treatment of such disease before any qualified Hakim, Vaid or other medical practitioner and shall undergo such treatment as such Hakim, Vaid or medical practitioner may prescribe for him.

7. The Government shall provide free of charge facilities necessary for examination, diagnosis and treatment of venereal diseases in the existing dispensaries and such other dispensaries as the Government may open in different localities, for male as well as for female patients.

8. Any medical officer or qualified private or subsidized medical practitioner shall be entitled to obtain free of cost a scientific report from any Government clinic or laboratory on any material which such medical practitioner may submit from a patient suspected to be suffering from a venereal disease.

9. All information obtained regarding diagnosis and treatment of any person suffering from a venereal disease shall be regarded as strictly confidential.

10. (1) Whoever contravenes any of the provisions of sections 3, 5, 6, and 9 of this Act shall be punishable with fine which may extend to twenty-five rupees.

(2) Whoever, having been convicted under sub-section (1), is again convicted under that sub-section shall be punishable with a fine which may extend to one hundred rupees.

11. (1) The Government may make rules for carrying out the provisions of this Act.



(2) In particular and without prejudice to the generality of the foregoing power such rules may:—

(a) prescribe the form of the register to be maintained under section 4 ;

(b) specify the particulars to be given by a person registering his name under section 3 ;

(c) provide for the distribution of anti-venereal drugs amongst the private medical practitioners and the minimum qualifications of such medical practitioners ; and

(d) provide for the examination, diagnosis and treatment of females suffering from a venereal disease.

**12.** No Court shall take cognizance of an offence under sections 3 and 6 of this Act, except on

■ Prosecution for offences under sections 3 and 6 of this Act.

the complaint of a Medical officer.

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8552

# LAWS OF JAMMU AND KASHMIR.

(Being a collection of all the enactments, whether passed by the Praja Sabha and assented to by His Highness the Maharajadhiraj or made or issued by His Highness and in force in the Jammu and Kashmir State.)

## SUPPLEMENT

S. 2004.

Advocate High Court  
Jammu & Kashmir  
Srinagar,



JAMMU:

Printed at The Ranbir Government Press—27-11-2005—1000.

1949.







Laws - J&K

# Alphabetical list of Acts incorporated in this Volume.

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2004	The Gilgit Scouts Laws (Act XVI of 2004)	.. 16
2004	The Jammu and Kashmir Entertainment Duty Act, 2004 (Act II of 2004)	.. 9
2004	The Jammu and Kashmir General Sales Tax Act, 2004 (Act I of 2004)	.. I

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The following is a list of the names of the persons who have been appointed to the various positions in the office of the Secretary of the State of New York.

For the office of the Secretary of the State of New York.

For the office of the Secretary of the State of New York.

For the office of the Secretary of the State of New York.

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## Chronological list of Acts incorporated in this Volume.

Year.	Short title.	Page.
2004	The Jammu and Kashmir General Sales Tax Act, 2004 (Act No. I of 2004)	.. I
2004	The Jammu and Kashmir Entertainment Duty Act, 2004 (Act No. II of 2004)	.. 9
2004	The Camping and Mooring Sites Act, 2004 (Act No. XII of 2004)	.. 14
2004	The Gilgit Scouts Laws, 2004 (Act XVI of 2004)	.. 16

**D O N A T E D**

**By**

**PANDIT SHAMBOO NATH DAR,**  
**( 1901 — 1969 )**

**ADVOCATE,**

**and former President**

**SRINAGAR MUNICIPAL COUNCIL**

*P. N. Dar*  
Advocate High Court  
Jammu & Kashmir  
Srinagar







## Prefaratory Note.

Supplement for Samvat year 2004 to the Laws of Jammu and Kashmir is published to make the Laws complete upto the end of Chet 2004. Amending Acts have not been included in this volume as they are published in the form of correction slips which can be obtained from the Superintendent Press, Jammu, on moderate price. It is proposed that such Supplements will be regularly published until revised edition of the Laws of Jammu and Kashmir is published.

(Sd.) BADRI NATH,

*Assistant Law Secretary.*

  
Advocate High Court  
Jammu & Kashmir  
Srinagar.



general tax on the sale of goods in the State; It is hereby enacted as follows—

I. (1) This Act may be called the Jammu and Kashmir General Sales Tax Act, 2004.  
Short title, extent and commencement.

(2) It extends to the whole of the State.

(3) It shall come into force from the first day of Baisakh, 2004.

2. In this Act, unless there is anything repugnant in the subject or context—

*Definitions.*

(a) “assessing authority” means any person authorised by the Government to make any assessment under this Act;

(b) “certificate” means a certificate granted or renewed under this Act;

(c) “commissioner” means any person appointed by the Government to exercise functions of Commissioner under this Act;

(d) “dealer” means any person who carries on the business of selling goods and includes any firm or association which sells goods to its members.

*Explanation.*—The agent of a dealer who resides outside the State and who carries on the business of selling goods in the State shall be deemed to be the dealer in respect of such business for the purposes of this Act;

(e) “goods” means all kinds of movable property other than actionable claims, money, stocks, shares and securities;

(f) “licence” means a licence granted or renewed under this Act,

(g) “prescribed” means prescribed by rules made under this Act;

(h) “sale” means—

(i) every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge; or

(ii) a transfer of goods on the hire purchase or other instalment system of payment, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price;

(i) “tax” means the tax leviable under the provisions of section 3;

(j) “turnover” means aggregate amount as determined in the manner provided by or under this Act, for which



goods or any specified class of goods are sold or deemed to have been sold by a dealer during the year whether for cash or for deferred payment or other valuable consideration but shall not include any amount for which any goods exempted from taxation are sold, or subject to such conditions and restrictions as may be prescribed, any cash or other discount on the price allowed in respect of any sale or any amount refunded in respect of articles returned by customers.

*Explanation.*—Subject to such conditions and restrictions, if any, as may be prescribed in this behalf, the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof; and

(k) “year” means the financial year.

3. (1) Subject to the provisions of this Act there shall be Liability to tax under this Act. charged on the turnover every year a tax at the rate of one and a half pice in the rupee or fraction thereof and such tax shall be charged on the sale of goods once only.

(2) Such tax shall be payable by the dealer in the year 2004 on the turnover of the year 2003 and in respect of each subsequent year on the turnover of the preceding year;

Provided that notwithstanding anything contained in this Act the sale tax to be charged on the turnover of the year 2003 shall be recoverable from such dealers as are liable to pay income tax and shall be equivalent to the amount of income tax chargeable on such dealers for the assessment year 2004.

4. The Government may, subject to such restrictions and Exemption from taxation. conditions as may be prescribed, including conditions as to licences and licence fees, by order exempt in whole or in part from the payment of the tax any class of dealers or any goods or class or description of goods and may prescribe the points in the series of sales by successive dealers at which any goods or class or description of goods may be so exempted.

5. In respect of such goods as may be notified by the Sales of certain goods for delivery outside the State. Government and subject to such restrictions and conditions as may be prescribed, the whole or any portion of the tax leviable on the sale of such goods may be remitted if it is proved to the satisfaction of the assessing authority that such goods have been despatched outside the State.



6. The Government or such other authority as it may direct, may, on application and on payment of such fee as may be prescribed in this behalf, grant a licence to any person under this section who for an agreed commission or brokerage conducts sales on behalf of principals in the State whose names are specified in his accounts in respect of each transaction and may exempt from the tax such of his transactions as are carried out in accordance with the terms and conditions of his licence;

Provided that no such exemption shall be given unless the amounts for which the goods concerned in such transactions are sold, are included in the turnover of the principals or of the dealers from whom purchases were made or would have been so included but for an exemption provided under this Act.

7. (1) Subject to the provisions of this Act, every dealer shall submit such return or returns of his turnover in such manner and within such periods not being less than thirty days as may be prescribed.

(2) The assessing authority shall by notice call upon such dealer to submit such return or statement of his turnover in such manner and within such periods as may be prescribed.

(3) If the assessing authority is satisfied that any return or statement submitted under sub-section (1) or sub-section (2) is correct and complete, he shall assess the dealer on the basis thereof.

(4) If no return or statement is submitted by the dealer under sub-section (1) or sub-section (2) within the period prescribed in this behalf or if the return or statement submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall proceed to determine the turnover in such manner as may be prescribed.

Provided that before taking action under this sub section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return or statement submitted by him.

8. The tax shall be paid in such manner and within such time, as may be specified in the notice of assessment, not being less than thirty days from the date of service of the notice.

Provided that the Commissioner or such other person as the Government may direct, may, for reasons to be recorded in writing, extend the date of such payment.



9. (1) Any assessee objecting to an assessment made on him may, within thirty days from the date on which he was served with notice of the assessment, appeal to such authority as may be prescribed.

Appeals. Provided that the appellate authority may, on sufficient cause being shown, admit an appeal after the period hereinbefore prescribed.

Provided, further, that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax in respect of which the appeal has been preferred.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appellate authority shall, after giving the appellant a reasonable opportunity of being heard, pass such orders on the appeal as such authority may think fit.

(4) A second appeal shall lie to the Commissioner from an order passed under clause 9 sub-clause (3) when the amount of turnover charged with the tax exceeds rupees ten thousand. Provisions with regard to limitation in respect of first appeal shall apply to second appeal also.

(5) Every order passed in appeal under this section shall, subject to any order passed in revision under section 10, be final.

10 (1) The Commissioner may at any time of his own motion or on application made to him, call for the record of any proceedings which are pending before or have been disposed of by any assessing or appellate authority appointed under this Act, for the purpose of satisfying himself as to the legality or propriety of such proceedings or of any order made therein and may pass such order in relation thereto as he may think fit.

Revision. (2) The Minister-in-charge may, at any time, call for the record of any case decided under sub-section (1) and if, in his opinion, the final order contains an erroneous decision on an important question of law, he may pass such order on the case as he may think fit.

(3) No order shall be made under this section which adversely affects the rights of an assessee or other person upon whom an obligation is imposed by or under this Act, without giving such assessee or other person a reasonable opportunity of being heard.

11. (1) Every dealer shall maintain a true and correct account of the value of the goods sold and bought by him.

Accounts to be maintained by dealers.



(2) If it appears to an assessing authority that a dealer has neglected to maintain his accounts in a satisfying manner, he may direct such dealer to maintain his accounts in such manner as may be prescribed.

12. (1) Any officer empowered by the Government in this behalf may, for the purposes of this Act, require any dealer, to produce before him the accounts and other documents and to furnish any other information relating to his business.

Power to order production of accounts and powers of entry and inspection.

(2) All accounts and registers maintained by dealers in the ordinary course of their business, the goods in their possession and in their buildings, offices, shops, godowns, tents, enclosures booths, vehicles, vessels, boats, rafts or in any other place in which business is done shall be open to inspection at all reasonable times by such officers, not below the rank of a gazetted officer, as may be authorised in this behalf.

(3) Any such officer shall have power to enter, for the purpose referred to in sub-sections (1) and (2) any building, office, shop, godown, tent, enclosure, booth, vehicle, vessel, boat, raft or any other place in which business is done.

13. (1) Any amount of tax which remains unpaid after the date specified in the notice of assessment or such other date fixed in accordance with the provisions of section 8, shall be recoverable by the Collector from the person liable for the same as if it were an arrear of land revenue.

(2) Any question as to whether a tax is recoverable under this Act the person from whom it is due and the amount so recoverable shall be determined by the assessing authority.

(3) A certificate over the signatures of the assessing authority shall be final and conclusive proof both as to the amount of the tax which is due and as to the person from whom it is due.

14. (1) Any person who—

Offences and Penalties.

(a) wilfully submits an untrue return or fails without reasonable excuse to submit a return as required by the provisions of this Act or the rules made thereunder, or

(b) being required by or under this Act to maintain a true and correct account of the value of goods sold or bought by him or to maintain such accounts in the prescribed manner fails without reasonable excuse so to do, or

(c) fails without reasonable excuse to pay the tax due from him within the time allowed, or



(d) fraudulently evades the payment of any tax due under this Act, or

(e) prevents or obstructs inspection or entry by any officer authorised under section 12 in contravention of the terms thereof, or

(f) wilfully acts in contravention of any of the other provisions of this Act,

shall, on conviction by a Magistrate of the first class, be liable to a fine which may extend to five hundred rupees, or double the amount of the tax recoverable, whichever is greater, and where the breach is a continuing breach, to a further fine which may extend to fifty rupees for every day after the first during which the breach continues.

(2) No court shall take cognizance of any offence under this section or the rules framed under this Act except upon the complaint in writing of the prescribed authority and without the sanction of the Commissioner.

15. The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence,—

(a) where the offence consists of the failure to pay, or of the evasion of any tax recoverable under this Act, in addition to the tax so recoverable, a sum of money not exceeding five hundred rupees or double the amount of the tax recoverable, whichever is greater, and

(b) in other cases, a sum of money not exceeding one thousand rupees.

16. (1) No suit, prosecution or other proceedings shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act without the previous sanction of the Government.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

17. No suit shall be instituted against the State and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.



18. (1) The Government may make rules to carry out the  
Power to make rules. purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for—

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) the manner in which the turnover shall be ascertained and the tax shall be assessed, levied or collected;

(c) the circumstances in which and the conditions under which dealers may compound for the tax assessable on their turnover by payment of a fixed fee and the rates at which such fixed fee shall be charged; the issue of certificates in proof of such composition;

(d) the instalments, by which the tax shall be paid;

(e) the granting of licences and certificates to dealers and agents and imposing of conditions applicable to, and fees payable for, such licences and certificates;

(f) the assessment to the tax of businesses which are discontinued or the ownership of which has changed;

(g) the assessment to the tax of businesses owned by minors and other incapacitated persons or by persons residing outside the State;

(h) the assessment of a business owned by any person whose estate or any portion of whose estate is under the Control of the Court of Wards, or any receiver or manager appointed by or under any order of a Court;

(i) the assessment of any turnover which has escaped assessment, and the period not exceeding three years within which such assessment may be made;

(j) the rectification of mistakes apparent from the record of any assessment, appeal or revision and the period within which such rectification may be made;

(k) the submission of returns, the production of documents, and the attendance of persons and their examination on oath or affirmation;

(l) the maintenance of the secrecy of returns furnished or accounts or documents produced or evidence of any kind given under this Act before any assessing authority or on appeal or revision from any decision of such authority;

(m) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act;

(n) the general regulation of the procedure to be followed and the forms to be adopted in proceedings under this Act; and



(o) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Government, necessary for giving effect to purposes of this Act.

(3) In making any rule under this section the Government may provide that a person guilty of a breach thereof, shall on conviction by a Magistrate of the first class be punishable with fine which may extend to five hundred rupees and where the breach is a continuing one, with further fine which may extend to twenty-five rupees for every day after the first during which the breach continues.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition that the rules shall be made after previous publication.

(5) All rules made under this section shall be published in the Government Gazette, and upon such publication shall have effect as enacted in this Act.

## THE JAMMU AND KASHMIR ENTERTAINMENTS Duty Act, 2004.

Act No. II of 2004.

*J. N. Dora*  
Advocate High Court  
Jammu & Kashmir  
Srinagar.

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**THE JAMMU AND KASHMIR ENTERTAINMENT DUTY ACT, 2004.****Act No. II of 2004.**

*[Received the assent of His Highness the Maharaja Bahadur on 18th May 1947 and published in the Government Gazette dated 23rd Jeth, 2004.]*

**An Act to impose a duty in respect of Admission to Entertainments in the Jammu and Kashmir State**

WHEREAS it is expedient to provide for the levy of a duty in respect of admission to theatres, cinemas and other places of public entertainments in the State; It is hereby enacted as follows:—

1. (1) This Act may be called the Jammu and Kashmir  
Short title, extent and commencement. Entertainments Duty Act, 2004.

(2) It shall come into force on such day as the Government may by notification appoint in this behalf.

(3) It shall extend in the first instance only to the municipal area limits of Jammu and Srinagar cities and to the Gulmarg Notified Area but the Government may by notification from time to time extend all or any of the provisions of this Act to any other local area.

2. In this Act unless there is anything repugnant in the subject or context—

## Definitions.

(a) "admission to an entertainment" includes admission to any place in which the entertainment is held;

(b) "entertainment" includes any exhibition, performance, amusement, game or sport to which persons are admitted on payment;



(c) "payment for admission" includes—

- (i) any payment made by a person who having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving duty or additional duty is required ;
- (ii) any payment for seats or other accommodation in a place of entertainment ;
- (iii) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment ;

(d) "prescribed" means to prescribe by rules made under this Act ;

(e) "proprietor" in relation to any entertainment includes any person responsible for the management thereof ; and

(f) "seats" includes standing accommodation.

3. (1) There shall be levied and paid to the Government on all payments for admission to any entertainment, a duty (hereinafter referred to as the "entertainments duty") at such rate or rates as may from time to time be prescribed by the Government by notification.

(2) Where the payment for admission to an entertainment is made by means of a lumpsum paid as a subscription or contribution to any society, or for a seat on ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time or for any privilege, right, facility or thing combined with the right of admission to any entertainment or involving such right of admission without further payment or at a reduced charge, the entertainment duty shall be paid on the amount of the lumpsum; but where the Government are of opinion that the payment of a lumpsum for any payment for a ticket represents payment for other privileges, rights or purposes besides the admission to an entertainment, or covers admission to an entertainment during any period for which the duty has not been in operation, the duty shall be charged on such amount as appears to the Government to represent the right of admission to entertainments in respect of which the entertainments duty is payable.

4. Entertainments duty shall be levied and paid on all complimentary tickets issued by the proprietor of an entertainment for any performance.

Liability of complimentary tickets to entertainments duty.



5. (1) Save as otherwise provided by this Act no person shall be admitted on payment to any entertainment where the payment is subject to entertainments duty except with a ticket stamped with an impressed, embossed, engraved or adhesive stamp not before used issued by the Government for the purposes of revenue and denoting that the proper entertainments duty has been paid.

(2) The Government may, on the application of the proprietor of any entertainment in respect of which the entertainments duty is payable under section 3, permit the proprietor on such conditions as the Government may prescribe, to pay the amount of the duty due.

(a) by a consolidated payment of a percentage to be fixed by the Government of the gross sum received by the proprietor on account of payments for admission to the entertainment and on account of the duty, or

(b) in accordance with returns of the payments for admission to the entertainment and on account of the duty, or

(c) in accordance with the results recorded by any mechanical contrivance that automatically registers the number of persons admitted.

(3) The provisions of sub-section (1) of this section and of section 6 shall not apply to any entertainment in respect of which the duty due is payable in accordance with the provisions of sub-section (2).

6. If any person is admitted on payment to any place of entertainment and the provisions of section 5 are not complied with, the proprietor of the entertainment to which such person is admitted shall, on conviction before a Magistrate, be liable in respect of each offence to a fine which may extend to five hundred rupees and shall also be liable to pay any duty which should have been paid.

7. (1) The Government may accept from any person who has committed an offence punishable under this Act, by way of composition of such offence, a sum of money not exceeding two hundred and fifty rupees or a sum double the amount payable under section 3 whichever is greater.

(2) On payment of such sum of money the accused person, if in custody, shall be discharged and no further proceedings shall be taken against such person in respect of such offence.

8. (1) No entertainments duty shall be levied on payments for admission to any entertainment where the Government are satisfied that the whole of the net proceeds of the

Entertainments for charitable or educational purposes exempted.



entertainment will be devoted to philanthropic, charitable, educational or scientific purposes.

(2) The Government may, by general or special order, exempt any entertainment or class of entertainments from liability to entertainments duty.

Exemption by Government.

9. (1) The Government may make rules for securing the payment of the entertainments duty and generally for carrying into effect the provisions of this Act, and in particular:—

Power to make rules.

(a) for the supply and use of stamps or stamped tickets or for the stamping of tickets sent to be stamped; and for securing the defacement of stamps when used;

(b) for the use of tickets covering the admission of more than one person and the calculation of the duty thereon, and for the payment of the duty of the transfer from one part of a place of entertainment to another and on payments for seats or other accommodation;

(c) for controlling the use of mechanical contrivances including the prevention of the use of the same mechanical contrivance for payments of a different amount, and for securing proper records of admission by means of mechanical contrivances;

(d) for the checking of admissions, the keeping of accounts and the furnishing of returns by the proprietors of entertainments in respect of which the duty due is payable in accordance with the provisions of sub-section (2) of section 5;

(e) for the renewal of damaged or spoiled stamps and for the procedure to be followed on application for refund;

(f) for the keeping of accounts of all stamps used under this Act; and

(g) for the presentation and disposal of applications for exemption from payment of the entertainments duty or for the refund thereof.

(2) If any person acts in contravention of or fails to comply with any such rules, he shall on conviction before a Magistrate, be liable in respect of each offence to a fine not exceeding five hundred rupees.

(3) Such rules shall be made after previous publication.

10. Any officer or any class of officers empowered by the Government by general or special order may enter any place of entertainment while the entertainment is proceeding, and any place ordinarily used as a place of entertainment, at any reasonable time with a view to seeing whether the provisions of this Act or the rules made thereunder are being complied with.

Power to enter place of entertainment for purposes of the Act.



II. Any sum due on account of entertainments duty shall be recoverable as an arrear of land revenue.

Recoveries-

12. Any of the powers and duties conferred or imposed upon the Government by this Act may be exercised or performed, subject to such conditions as the Government may prescribe, by any person whom the Government may by general or special order empower in this behalf.

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## THE CAMPING AND MOORING SITES ACT, 2004.

Act No. XII of 2004.

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## THE JAMMU AND KASHMIR CAMPING AND MOORING SITES ACT, 2004.

Act No. XII of 2004.

[Received the assent of His Highness the Maharaja Bahadur on 18th May, 1947 and published in Government Gazette dated 23rd Jeth, 2004].

**An Act for the regulation and control of camping and mooring sites in areas outside municipal limits of Srinagar (Kashmir)**

Preamble.

WHEREAS it is expedient to provide for the regulation and control of camping and mooring sites in the camping grounds and mooring ghats



outside municipal limits of Srinagar ; It is hereby enacted as follows :—

I. (I) This Act may be called the Camping and Mooring

Short title, extent and commencement.

Sites Act, 2004.

(ii) (a) It extends to the Notified Area of Pahalgam, to the villages of Nasim Bagh, Shadipur, Ganderbal, Sonemarg, Achhabal and Kokarnag and the mooring sites along the Ningli Plantation.

(b) The Government may by notification in the Government Gazette direct that all or any specified part of the Act shall extend to any other place in the Kashmir Province.

(iii) It shall come into force on such day as the Government may by notification in the Government Gazette appoint in this behalf.

2. In this Act unless there is anything repugnant in the subject or context ;

Definitions.

(a) "camping site" means a site in a camping ground demarcated for pitching of tents.

(b) "camping ground" means any area which has been specified for camping purposes ;

(c) "mooring site" means a site where a set of house-boats may be allowed to moor ;

(d) "Director" means the Director Visitors' Bureau.

3. No person shall occupy any camping or mooring site except under a permit granted in the prescribed form by the Director or any officer authorised by him in this behalf.

Prohibition to occupy site without permit.

4. Every person to whom a permit has been granted under section 3 shall produce the permit and receipt for the money paid for occupying camping or mooring site, for inspection of the Director or any officer authorised by the Director, at all reasonable hours when called upon to do so.

Production of permit.

5. The Government may from time to time make rules for the regulation and control of the camping and mooring sites in the areas to which this Act applies.

Power to make rules.

(I) In particular and without prejudice to the generality of the foregoing powers, such rules may :—

(a) provide for the method of allotment of the camping and mooring sites and issuing of permits ;

(b) prescribe the conditions on which the camping and mooring sites shall be allotted and fix the rate of rent to be paid therefor ;



(c) fix the area of the camping and mooring sites and prescribe conditions on which reservation of camping and mooring sites may be permitted ;

(d) provide for inspection and better sanitary and hygienic conditions of camping and mooring sites ;

(e) determine the manner in which the occupiers of camping and mooring sites and their agents acting on their behalf in this respect, pitch tents or moor boats ; and

(f) prescribe forms of permits to be issued under the Act.

6. Any person who contravenes any of the provisions of this Act or of the rules made thereunder shall on conviction before a Magistrate be liable to fine not exceeding Rs. 500 and in the case of a continuing offence to a fine not exceeding Rs. 50 for each day on which the offence continues after such conviction.

7. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

Protection of acts  
under the Act.

## **THE GILGIT SCOUTS LAW, 2004.**

### **Act No. XVI of 2004.**

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*G. N. Advocate High Court Jammu & Kashmir Srinagar.*

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**THE GILGIT SCOUTS LAWS, 2004.**

**Act No. XVI of 1947/2004.**

*[Sanctioned by His Highness the Maharaja Bahadur and published in the Government Gazette dated 30th Sawan, 2004.]*

**A law to provide for the regulation of the Gilgit Scouts in the Gilgit Frontier Province.**

WHEREAS it is expedient to provide for the regulation of Gilgit Scouts in the Gilgit Frontier Province :

Now, therefore, in exercise of Our powers under section 5 of the Jammu and Kashmir Constitution Act, 1996, and all other powers enabling Us in that behalf We are pleased to make the following Law, namely :—

1. (1) This Law may be called the Gilgit Scouts Law, 2004.

Short title extent, application and commencement.

(2) It extends to the Officers, Indian Officers and other members of the Gilgit Scouts whether serving within or without the limits of the Territories of His Highness the Maharaja Bahadur.

(3) It shall come into force with effect from 1st August 1947/17th Sawan 2004.

2. (1) In this Law, unless there is anything repugnant in the subject or context :—

Definitions.

(a) “active service” means service against hostile tribes, raiders or other hostile persons, or persons co-operating with or assisting such tribes, raiders or hostile persons.



(b) "Commandant" means the person appointed by His Highness the Maharaja Bahadur to be Commandant of the Gilgit Scouts;

(c) "Indian Officer" means a member of the Gilgit Scouts appointed or promoted to the rank of Indian Officer by the Governor Gilgit Frontier Province;

(d) "Member of the Gilgit Scouts" means a person (other than a person appointed by His Highness the Maharaja Bahadur) who:—

(i) is serving in the Gilgit Scouts, or

(ii) after the commencement of this Law has been appointed to the Gilgit Scouts under this Law, and

(I) has signed or attested an enrolment certificate containing the conditions of service set forth in the Schedule, or

(II) has for six months been in receipt of pay in respect of such appointment, and has been borne on the rolls of the Gilgit Scout.

(e) "Officer" means a person appointed by His Highness the Maharaja Bahadur to be an Officer of the Gilgit Scouts and includes a person holding the Commission of His Highness the Maharaja Bahadur as a State Officer.

(f) the expressions "abet", "assault", "criminal force", "fraudulently", "reason to believe" and "voluntarily causing hurt" have the meanings assigned to them respectively in the Ranbir Penal Code (XII of 1989).

2. In this section references to appointments by His Highness the Maharaja Bahadur shall be construed as including references to appointments made before the 1st of August 1947/17th Sawan 2004 by the Crown Representative.

3. There shall continue to be a force (maintained by

Power to maintain  
Gilgit Scouts.

His Highness the Maharaja Bahadur and called the Gilgit Scouts) for the better

protection and administration of the external frontier of the territories of His Highness the Maharaja Bahadur within the limits of or adjoining, the Gilgit Frontier Province or any part thereof.

4. The Gilgit Scouts shall be constituted in such manner, and the members of the Gilgit Scouts shall receive such pay, pension, and other remuneration as shall, from time to time, be ordered by His Highness the Maharaja Bahadur.

5. (1) His Highness the Maharaja Bahadur may appoint

Appointment and powers  
officers, Gilgit Scouts.

the Gilgit Scouts,

any person to be Commandant, and may appoint other persons to be Officers of



(2) The Commandant and every other officer of the Gilgit Scouts shall possess, and may exercise, such power (and authority over the subordinate officers and members of the Gilgit Scouts for the time being under his command as is provided by or under this Law.

6 Upon the appointment, dismissal and discharge of the Indian officers and other members of the Gilgit Scouts shall rest respectively, with the Governor and the Commandant who shall exercise their powers under this Law in such manner as may be prescribed by rules under this Law.

7 The superintendence of and control over the Gilgit Scouts shall vest in the Governor of Gilgit Frontier Province acting on behalf of His Highness the Maharaja Bahadur and the Gilgit Scouts shall be administered by the Governor and the Commandant in accordance with the provisions of this Law and any rules made thereunder.

8 Every member of the Gilgit Scouts who—  
More heinous offences.

(a) begins, excites, causes or conspires to cause, or joins, any mutiny or being present at any mutiny does not use his utmost endeavours to suppress it, or knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the authority of His Highness the Maharaja of Jammu and Kashmir or His Highness' Government, does not, without delay give information thereof to his Commanding or other superior officer, or

(b) uses or attempts to use, criminal force to, or commits an assault on, his superior officer whether on duty knowing or having reasons to believe him to be such, or

(c) shamefully abandons or delivers up any garrison, fortress, post or guard which is committed to his charge, or which it is his duty to defend, or

(d) directly or indirectly holds correspondence with, assists or relieves, any person in arms against His Highness the Maharaja Bahadur of Jammu and Kashmir or His Highness' Government or omits to disclose immediately to his Commanding or other superior officer any such correspondence coming to his knowledge, or who while on active service:—

(e) disobeys the lawful command of his superior officer;



- (f) deserts the service ; or
- (g) being a sentry, sleeps upon his post, or quits it without being regularly relieved or without leave ; or
- (h) leaves his Commanding Officer or his post or party to go in search of plunder ; or
- (i) quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or
- (j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to camp or quarters, or forces a safeguard or without authority breaks into any house or any other place for plunder, or plunders, destroys, or damages any property of any kind ; or
- (k) intentionally causes or spreads a false alarm in action or in camp, garrison or quarters , or

(l) displays cowardice in the execution of his duty ; shall be tried by the Court of Session of the Governor and on conviction shall be punishable with imprisonment for life, or with imprisonment for a term of not less than seven years, or with simple or rigorous imprisonment for a term which may extend to fourteen years or with fine which may extend to three months' pay, or with fine to that extent in addition to such sentence of imprisonment as may be passed upon him under this section.

(2) Appeals from the Court of Sessions of the Governor shall lie to the Prime Minister, Jammu and Kashmir.

(3) If any member of the Gilgit Scouts, while on active service with a force beyond the limits of His Highness' territories is charged with any offence described in clause (c), clause (d) or clause (f) of sub-section (1) or the offence of culpable homicide amounting to murder, he may be summarily tried in the prescribed manner for such offence by the officer appointed by His Highness in this behalf accompanying the force sitting with two other officers or Indian Officers appointed by the former for this purpose, and if one or both of the officers sitting with him concur in finding the accused guilty and he so directs the accused shall be forthwith shot to death.

(4) Every officer appointed under sub-clause (3) shall be either—

(a) a person holding His Highness' Commission in the Jammu and Kashmir State Forces ; or

(b) a civil officer of gazetted rank ; or

(e) a person appointed under section 5.

9. (1) Every member of the Gilgit Scouts who :—

Less heinous offences.



(a) is in a state of intoxication when on, or after having been warned for, any duty, or on parade or on the line of march ; or

(b) strikes or attempts to force any sentry ; or

(c) being in command of a guard, piquet or patrol refuses to receive any prisoner or person duly committed to his charge, or without proper authority, releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape ; or

(d) being under arrest or in confinement, leaves his arrest or confinement, before he is set at liberty by proper authority ; or

(e) is grossly insubordinate or insolvent to his superior officer in the execution of his office ; or

(f) refuses to superintend or assist in the making of any field work or other work of any description ordered to be made either in quarters or in the field ; or

(g) strikes or otherwise ill-uses any member of the Gilgit Scouts subordinate to him in rank or position ; or

(h) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has committed any roit or trespass, fails on proof of the truth of the complaint, to have due reparation made, as far as possible, to the injured person or to report the case to the proper authority ; or

(i) designedly or through neglect injures or loses fraudulently or disposes of, his arms, clothes tools, equipments, ammunition, accoutrements or any such articles entrusted to him or belonging to any other person ; or

(j) Malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity ; or

(k) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person ; or

(l) does not, when called by his superior officer so to do, or upon ceasing to be a member of the Gilgit Scouts, forthwith deliver up, or duly account for, all or any arms ammunition, stores, accoutrements, appointments, or other property issued or supplied to him or in his custody or possession, as such member of the Gilgit Scouts ; or

(m) knowingly furnishes a false return or report as to the number or state of any men under his command, or charge or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge whether belonging to



such ~~man~~ or to the State, or to any member of, or (any person attached to, the Gilgit Scouts, or who, through ~~designated~~ or culpable neglect, omits or refuses to make or send any return or report of the ~~matters aforesaid~~ (b) strikes or attempts to strike or

(n) absents himself without leave or without sufficient cause, or stays leave granted to him or

(o) is guilty of an act or omission which though not specified in this law, is prejudicial to good order and discipline, or who, while not on active service, or

(p) disobeys the lawful command of his superior officer; or

(q) deserts the service; or

(r) being a sentry, sleeps, upon his post, or quits it without being regularly relieved or without leave, or

(s) quits his guard, picket, party or patrol without being regularly relieved or without leave, or

(t) plunders destroys or damages any property of any kind, or

(u) displays cowardice in the execution of his duty; or

(v) produces false evidence against another member of the Gilgit Scouts, or

shall be summarily tried in the prescribed manner; in the case of an Indian Officer by the Governor, in any other case by the Commandant, and on conviction shall be punishable with simple or rigorous imprisonment for the term, which may extend to one year, or with fine which may extend to three months, or with both.

(2) Appeal shall lie, in the case of the trials by the Governor to the Prime Minister, Jammu and Kashmir and in the case of trials by the Commandant to the Courts of the Governor.

10. (1) The Commandant, may, subject to any rules made under this law, summarily award, in lieu of, or in addition to, suspension from duty or dismissal, any of the following punishments to any member of the Gilgit Scouts who, in his opinion, is guilty of disobedience, neglect of duty or remissness in the discharge of any duty, or of rendering himself unfit to discharge his duty, or of other misconduct in his capacity as such member, that is to say:

(i) if such member is an Indian Officer, reprimand or reduction in grade;

(ii) if such member is a non-commissioned officer, any of the punishments referred to in clause (iii) reprimand or severe reprimand;

(iii) if such member is neither an Indian Officer nor a



- (a) reduction in grade and emoluments ;  
 (b) fine to any amount not exceeding one month's pay and allowances ;  
 (c) simple imprisonment for not more than six months with or without punishment drill or extra guard, fatigue or other duty ;  
 (d) removal from any office of distinction or special emolument in the Gilgit Scouts ;  
 (e) extra guard or picquet duty ;  
 (f) forfeiture of good service or proficiency pay or allowances.

(2) The Commandant may delegate to any officer under his command the powers conferred upon him by sub-section (1) to such extent as he may think fit.

(3) Any one of the punishments described in clauses (ii) and (iii) of sub-section (1) may be awarded separately or in combination with any one or more of the said punishments.

11. Every member of the Gilgit Scouts --

Attempt and abetments.

(a) who attempts to commit an offence under this Law, and in such attempt does any act towards the commission of the offence ;

(b) who abets any offence under this Law ;  
 shall be punishable in the same manner and with the same punishment as is provided for the offence attempted or abetted as the case may be.

12. (1) Every person sentenced under this Law to imprisonment may be dismissed from the

Place of imprisonment and liability to dismissal on imprisonment.

Gilgit Scouts, and shall be further liable by special order of the Court or of the Governor to forfeiture of pay and allowances or other public money due to him as well as of medals and decorations received.

(2) Every such person shall, if he is so dismissed, be imprisoned in the nearest prison or such other prison as the Governor may, by general or special order direct ; but if he is not also dismissed from the Gilgit Scouts, he may, if the Court or the Commandant so direct, be confined in the quarter guard or such other place as the Court or the Commandant may consider suitable.

13. The following penal deductions may be made from the pay and allowances of a member of the Gilgit Scouts, that is to say :—

Deductions from pay and allowances.

(a) all pay and allowances for every day of absence either on desertion or without leave and for every day of imprisonment



awarded by a Criminal Court or, in the case of members other than Indian Officers of confinement awarded summarily by an officer exercising authority under section 10 ;

(b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted ;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the proper Medical Officer attending on him at the hospital to have been caused by an offence under this law, committed by him ;

(d) all pay and allowances ordered to be forfeited under section 10 ; and

(e) any sum required to make good such compensation for any expenses caused by him, or for any loss of, or damage or destruction done by him to, any arms, ammunition, equipment, clothing, instruments or decoration, or to any buildings or property as may be awarded by the Commandant.

14. Whenever any weapon or part of a weapon or ammunition forming part of the equipment of a platoon or other similar unit is lost or

Collective fines.

stolen, the Commandant may, after making such inquiry as he thinks fit, impose a collective fine upon the non-commissioned officers and men of such unit or upon so many of them as in his judgment should be held responsible for such loss or theft.

15. No member of the Gilgit Scouts shall be at liberty

Resignations and withdrawal from the Gilgit Scouts.

to —

(a) resign his appointment during the term of his engagement except before the expiration of the first three months of his service ; or

(b) withdraw himself from all or any of the duties of his appointment without the previous sanction of the Governor in the case of an Indian Officer and of the Commandant in any other case.

16. (1) It shall be the duty of every member of the Gilgit Scouts promptly to obey and to execute

General duties of the members of the Gilgit Scouts.

all orders and warrants lawfully issued to him by any competent authority, to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists.

(2) Every member of the Gilgit Scouts shall be liable to serve without and beyond, as well as within the limits of the Gilgit Frontier Province.

17. (1) In any suit or proceedings against any member of the Gilgit Scouts for any act done by him in pursuance of a warrant or order of a competent authority, it shall be lawful

Protection for acts of members of the Gilgit Scouts.



for him to plead that such act was done by him under authority of such warrant or order.

(2) Such plea may be proved by the production of the warrant or order directing the act, and, if it is so proved, such member of the Gilgit Scouts shall thereupon be discharged from liability in respect of the act so done by him notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order.

(3) All suits and proceedings (whether civil or criminal) against any person which may lawfully be brought for anything done or intended to be done under powers conferred by, or in pursuance of, any provision of this Law or the rules thereunder, shall be commenced within three months after the act complained of was committed and not otherwise, and notice, in writing, of such suit or proceeding and of the cause thereof shall be given to the defendant or his superior officer one month at least before the commencement of the suit or proceeding.

18. His Highness the Maharaja Bahadur may, by notification in the Jammu and Kashmir Government Gazette, make rules:—

(a) regulating the functions and powers under this law of the Governor, the Commandant and other officers of the Gilgit Scouts;

(b) regulating the classes and grades, of and the remuneration to be paid to, the officers and men of and the conditions of service in, the Gilgit Scouts;

(c) prescribing the period of service for members of the Gilgit Scouts;

(d) regulating the award of minor punishments to members of the Gilgit Scouts under section 10;

(e) providing for appeals from, or the revision of orders under section 10;

(f) providing for the remission of deductions made under section 12;

(g) regulating the several or collective liability of members of the Gilgit Scouts in the case of the loss or theft of weapons and ammunition; and

(h) generally, for the purpose of carrying into effect the provisions of this law.

(Sd.) HARISINGH,

MAHARAJA.



## THE SCHEDULE.

## CONDITIONS OF SERVICE.

[See section 2 (1) (d) (ii) (I) ]

After you have served for a period of \_\_\_\_\_ years in the Gilgit Scouts as prescribed by His Highness the Maharaja Bahadur, you may at any time when not on active service, apply for your discharge through the officer to whom you may be subordinate or to the Commandant, and you will be granted your discharge after three months from the date of your application, unless your discharge would cause the vacancies of your class in the Gilgit Scouts to exceed one-tenth of the sanctioned strength, in which case you shall be bound to remain until this objection is waived by competent authority or removed. But when on active service, you shall have no claim to a discharge and you shall be bound to remain to do your duty until the necessity for retaining you in the Gilgit Scouts ceases, when you may make your application in the manner hereinbefore prescribed.

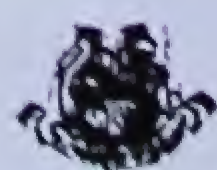
Provided that, if you wish to withdraw from the Gilgit Scouts, you may resign at any time before the expiration of the first three months of your service, but not afterwards until the completion of the period prescribed as aforesaid.

Provided, also, that the Commandant, or if you are an Indian Officer, the Governor, may, if he thinks fit, allow you to resign at any time on your giving three months notice of your wish to do so.

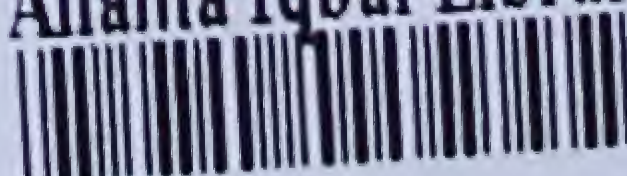
Signature or thumb impression of the member of the Gilgit Scouts in acknowledgement of the above having been read to him. } A. B.

Given in my presence after I had ascertained that A. B. understood the purport thereof. } C. D.

*G. N. Dar*  
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